

STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

**DOCKET**

**08-CRI-01**

DATE \_\_\_\_\_

RECD. MAR 09 2009

*Complaint / Request for Investigation* ) Docket Number 08-CRI-01  
*Regarding Energy Sense / MASCO* )  
\_\_\_\_\_ )

**RESPONSE TO THE COMPLAINANTS' FIRST AMMENDED SUBPOENA  
TO PRODUCE BUSINESS RECORDS FROM THE CALIFORNIA ENERGY  
COMMISSION**

The following is the response of the California Energy Commission ("Energy Commission") to the Complainants'<sup>1</sup> First Amended Application for Subpoena to Produce Business Records, as it relates to documents requested from the Energy Commission<sup>2</sup>:

1. *Initial complaints, including but not limited to, those lodged by either California Living and Energy and/or Duct Testers (hereinafter the "Complainants")*;

Response of the Energy Commission: Any and all such known and retained complaints are contained in the formal complaint filed by California Living & Energy and Duct Testers, dated June 5, 2008, and the supporting documents contained therein (collectively "Complainants' formal complaint")<sup>3</sup>; and 2) in the documents attached as Attachment A to this response.

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<sup>1</sup> Complainants in this proceeding are California Living and Energy and Duct Testers, Inc. The pleading filed by Complainants identifies them in the heading as "Petitioners." This Decision and Order correctly identifies them as "Complainants."

<sup>2</sup> The responses exclude written and electronic communications made subsequent to the filing, on July 9, 2008, of the formal complaint by the Complainants, as such communications were either posted to the docket in this proceeding or disclosed to both parties.

<sup>3</sup> Those documents can be found at the following link on the Energy Commission's website -- [www.energy.ca.gov/title24/enforcement/2008-CRI-01/documents/2008-07-31\\_COMPLAINT\\_TN-47306.PDF](http://www.energy.ca.gov/title24/enforcement/2008-CRI-01/documents/2008-07-31_COMPLAINT_TN-47306.PDF).

2. *All written and/or electronic communications between the CEC and the Complainants regarding the Alleged HERS Conflict of Interest Violations;*

Response of the Energy Commission: Any and all such known and retained communications are contained in 1) the Complainants' formal complaint; and 2) the documents attached as Attachment A to this response.

3. *All written correspondence between the CEC and Masco, or any other Masco-related entity, regarding the Alleged HERS Conflict of Interest Violations, including but not limited to, American National Services, Inc., Builders Services Group, Inc., Masco Contractor Services of California, Inc., Energy Sense, Inc., Coast Insulation, Western Insulation, Sacramento Building Products Company or any other Masco-related entity for whom Energy Sense, Inc. performs HERS field verification and testing services;*

Response of the Energy Commission: Any and all such known and retained communications consist of 1) an undated letter from David R. Bell, President of Energy Sense, to Tav Commins of the Energy Commission; and 2) a letter from Energy Commission Senior Staff Counsel William Staack to David R. Bell, dated May 17, 2007. Both documents are attached as Attachment B.

4. *Any and all CEC Board minutes, reports, notes, or other memoranda, written or electronic, generating by the CEC upon completion of the CEC's investigation into the Alleged HERS Conflict of Interest Violations;*

Response of the Energy Commission: The Energy Commission has not completed any investigation into the Alleged HERS Conflict of Interest Violations. The instant proceeding is the only pending investigation into the Alleged HERS Conflict of Interest Violations.

5. *Any and all correspondence between the California Home Energy Efficiency Rating Service ("CHEERS") and the CEC and/or agents, representatives and employees of the CEC concerning the Alleged HERS Conflict of Interest Violations;*

Response of the Energy Commission: The only such known and retained correspondence consist of 1) a letter from Carol Davis, CHEERS Legal Counsel, to William Staack, dated April 23, 2008; and 2) a letter from Energy Commission Senior Staff Counsel Dennis L. Beck, Jr., to Carol Davis, dated April 28, 2008. Both documents are attached as Attachment C.

6. *Any and all documents concerning funds provided by Masco or any other Masco-related entity for purposes of education and/or training for CHEERS raters, including, but not limited to, any special training classes conducted by, for, or on behalf of Masco or a Masco-related entity, including, but not limited to, American National Services, Inc., Builders Services Group, Inc., Masco Contractor Services of California, Inc., Energy Sense, Inc., Coast Insulation, Western Insulation, Sacramento Building Products Company;*

Response of the Energy Commission: No such documents are known and retained by the Energy Commission. Any such documents that exist would be retained by CHEERS.

7. *Any and all CEC Board minutes or any other documents, notes or other written memoranda in which the topic of the employees, agents or representatives of Masco or any other Masco-related entities, American National Services, Inc., Builders Services Group, Inc., Masco Contractor Services of California, Inc., Energy Sense, Inc., Coast Insulation, Western Insulation, Sacramento Building Products Company, becoming CHEERS certified Raters were discussed;*

Response of the Energy Commission: No such documents are known and retained by the Energy Commission. Pursuant to Section 1673 of Title 20 of the California Code of Regulations, HERS raters are trained and certified by the HERS providers. Any such documents that exist would be retained by CHEERS.

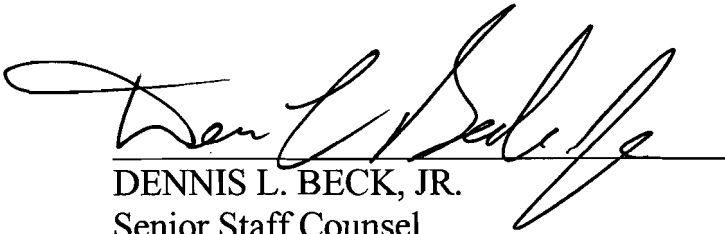
8. *Any and all CEC Board minutes or any other documents, notes or other written or electronic memoranda concerning any discussion, consultation or conversation regarding attempts by Masco or any other Masco-related entity, including, but not limited to, American National Services, Inc., Builders Services Group, Inc., Masco Contractor Services of California, Inc., Energy Sense, Inc., Coast Insulation, Western Insulation, Sacramento Building Products Company, to obtain HERS Rating certification; and*

Response of the Energy Commission: No such documents are known and retained by the Energy Commission. Pursuant to Section 1673 of Title 20 of the California Code of Regulations, HERS raters are trained and certified by the HERS providers. Any such documents that exist would be retained by CHEERS.

9. *Any and all CEC Board minutes or any other documents, notes or other written or electronic memoranda concerning any discussion, consultation or conversation regarding any de-certification of HERS Raters employed by Masco or any other Masco-related entity, including, but not limited to, American National Services, Inc., Builders Services Group, Inc., Masco Contractor Services of California, Inc., Energy Sense, Inc., Coast Insulation, Western Insulation, Sacramento Building Products Company.*

Response of the Energy Commission: No such documents are known and retained by the Energy Commission. Pursuant to Section 1673 of Title 20 of the California Code of Regulations, HERS raters are trained and certified (and thus also de-certified) by the HERS providers. Any such documents that exist would be retained by CHEERS.

Dated: March 4, 2009



DENNIS L. BECK, JR.  
Senior Staff Counsel  
California Energy Commission

Attachments:

- Attachment A – 157 pages
- Attachment B – 7 pages
- Attachment C – 3 pages

# Attachment

## A

**From:** "Bill Lilly" <bill.lilly@califliving.com>  
**To:** "Bill Pennington" <Bpenning@energy.state.ca.us>  
**Date:** 3/31/2006 12:08:31 PM  
**Subject:** 3rd party violation

Bill

In October of 2002 you wrote me stating that "... The MASCO quality control process does not satisfy this requirement." With your response I mistakenly thought that this situation would not come up again. Well, it has.

Another part of the 3rd party agreement state "...HERS raters cannot have any financial interest in the Builder's or contractor's business...". This is exactly what is happening in Pulte's Altura project in San Jose and Toscana and Avondale @ Mountain House. Coast Building Products (an insulation company) has the independent 3rd party agreement for Altura. Coast is installing and repairing their products on this project therefore are not independent. They have a financial interest in this project and can not be classified as independent 3rd party. Suppose (this is make believe and will never happen) the Builder said unless you pass this house you may not get the next sub-contract for the next phase.

As you can see in this e-mail I told Pulte I will contact the CEC regarding this violation and I left the items concerning this for your review.

I am going to send this to you by snail mail to illustrate the importance of this matter. Several years ago MASCO offered to buy my firm and in my opinion to control the market, it was no then and it is still no.

See 2nd issue and 3rd issue in my e-mail to Robert Dauth

Thanks

Bill

Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax  
bill.lilly@califliving.com  
www.califliving.com

-----Original Message-----

**From:** Bill Lilly [mailto:bill.lilly@califliving.com]  
**Sent:** Friday, March 10, 2006 12:44 PM  
**To:** Robert Dauth; Deb Heden; Gary Oertel  
**Cc:** Rich Giometti; Jeff; Dick; Anita; Larry Stubbart; Bill Holbrook  
**Subject:** RE: Altura bid & 3rd party

Robert

I thought the issue regarding 3rd party testing was resolved when Bill Pennington at the CEC ruled against Masco's EFL system several years. This is a little different in form then the previous ruling therefore I will need get confirmation from the CEC. Thanks for the understanding

0000001

Bill

-----Original Message-----

From: Bill Lilly [mailto:bill.lilly@califliving.com]  
Sent: Wednesday, March 08, 2006 11:11 AM  
To: Robert Dauth  
Cc: Rich Giometti; Jeff; Dick; Anita; Larry Stubbart; Bill Holbrook  
Subject: Altura bid & 3rd party

Robert

2nd issue

There is a independent 3rd party requirement in the State of California. We have gone over this several times with the CEC and sub-contractors such as insulators can not perform independent 3rd party testing on a subdivision that they have a financial interest in. Under the State statue the sub-contractor can not install or repair anything on a subdivision where they are the 3rd party inspectors. This law has been reviewed and up held by the State.

3rd issue/Liability

The next issue is suppose Pulte Homes is sued by a Home Owner (we know this will never happen) who complains about some sort of energy problem. It will help you the Builder to state that you hired somebody who does not install or repair any energy related product such as HVAC, insulation, fireplaces etc. to inspect their house. You need to have somebody who is really independent and who can testify in court for you, if needed. We carry Error and Omission Insurance they don't.

4th issue

Oh yea, if price is an issue then talk to us.

Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax  
bill.lilly@califliving.com  
www.califliving.com

-----Original Message-----

From: Robert Dauth [mailto:Robert.Dauth@Pulte.com]  
Sent: Wednesday, March 08, 2006 7:06 AM  
To: Bill Holbrook  
Cc: Larry Stubbart  
Subject: RE: Altura

0000002

Yes, it was the HERS bid. Coast Building Products was awarded the HERS inspections for both Altura and Devon Square. The decision was made largely due to the fact that that CL&E can no longer get primary wording in their insurance certificates. The other factor was price, their bid to perform the inspection was more competitive. Hope this helps Bill, let me know if there are any additional questions or concerns. Thanks.

Robert

**CC:** "Mike Bachand" <mike@mikebachand.com>, "California Energy Commission" <eehomes@energy.state.ca.us>, "John Eash" <jeash@energy.state.ca.us>, "Jeff" <jeff.chapman@califliving.com>, "Larry" <larry.stubbert@califliving.com>, "Bill H" <bill.holbrook@califliving.com>, "Anita" <anita.lilly@califliving.com>, "Dick" <dick.snedden@califliving.com>, <thamilton@cheers.org>

0000003





Bill Lilly <blillycle@gmail.com>

## FW: Pulte projects

Larry Stubbart <larry.stubbart@califliving.com>  
To: "Bill Lilly (E-mail)" <bill.lilly@califliving.com>

Fri, Jan 19, 2007 at 7:13 AM

BL:

Here is the information we need for Tav.

LS

-----Original Message-----

From: John Kindorf [mailto:[John.Kindorf@Pulte.com](mailto:John.Kindorf@Pulte.com)]  
Sent: Wednesday, January 17, 2007 2:58 PM  
To: [Rich.Dunn@masco.com](mailto:Rich.Dunn@masco.com); [david.short@masco.com](mailto:david.short@masco.com);  
[larry.stubbart@califliving.com](mailto:larry.stubbart@califliving.com)  
Cc: Revitt, Evonne; Zack Jones  
Subject: FW: Pulte projects

Attached are Request for Payment letters for projects where Masco (CHEERS) performs HERS Rating and CLE performed the Title 24/Energy Star calculations just in case you never got them from us. In addition to the communities above, Masco has HERS Rating contracts at Wyndam and Stratford. Note that PG&E has no record of these 2 newer communities.

I expect that CLE and Masco can work together to ensure the rebates are available to Pulte for all lots at Wyndam and Stratford and that the PG&E application is has been filed.

John Kindorf  
Purchasing Manager SFD  
Pulte Homes  
6210 Stoneridge Mall Road, 5th Floor  
Pleasanton, CA 94588  
Ph: (925) 249-3246  
Fx: (925) 249-4374  
Cell: (925) 383-5455

-----Original Message-----

From: Revitt, Evonne [mailto:[ERH2@pge.com](mailto:ERH2@pge.com)]  
Sent: Wednesday, January 17, 2007 11:17 AM  
To: John Kindorf  
Cc: Turkatte, Linda  
Subject: FW: Pulte projects

Hi John,

Attached are the acceptance letters and Request For Payment Forms for 6 of the 7 active projects that I have for you. I am still waiting for the Acceptance letter and Request For Payment form for the Magnolia Park Legends project and will get that to you as soon as it is ready.

0000004

Evonne

Evonne Revitt

PG&E  
1955 41st Avenue, Suite B-2  
Capitola, CA 95010  
ph: (916) 213-4032  
FAX: (831) 479-5806

-----Original Message-----

From: Revitt, Evonne  
Sent: Wednesday, January 17, 2007 10:42 AM  
To: 'John Kindorf'  
Subject: Pulte projects

John,

Below are the applications that I show we have for you. Were the other projects submitted under different names. Attached is a PDF file listing all projects that we have for you.

The only active projects in our database from your list below are:

Terra Bella @ Mountain House  
Amberlea @ Mountain House  
Avondale  
Toscana  
Magnolia Park legends, Groves, and Gables

I will send you the acceptance letters for these.

Evonne

-----Original Message-----

From: John Kindorf [mailto:[John.Kindorf@Pulte.com](mailto:John.Kindorf@Pulte.com)]  
Sent: Friday, January 12, 2007 3:07 PM  
To: Revitt, Evonne  
Subject: RE: Magnolia Park Legends by Pulte

Gable Lane - no application under that name Terra Bella - Terra Bella @ Mountain House - active Amberlea - Amberlea @ Mountain House - active Avondale - active Toscana - active Gallery - no application under that name Classics - no application under that name Arbors - no application under that name Estates - no current application under that name, all expired or paid Legends - Magnolia Park Legends - active Groves - Magnolia Park Groves - active Gables - Magnolia Park Gables - active Wisteria - expired Wyndam - no application under that name Stratford - no application under that name

John Kindorf  
Purchasing Manager SFD  
Pulte Homes  
6210 Stoneridge Mall Road, 5th Floor  
Pleasanton, CA 94588  
Ph: (925) 249-3246  
Fx: (925) 249-4374  
Cell: (925) 383-5455

-----Original Message-----

From: Revitt, Evonne [mailto:[ERH2@pge.com](mailto:ERH2@pge.com)]  
Sent: Friday, January 12, 2007 11:31 AM  
To: John Kindorf  
Subject: Magnolia Park Legends by Pulte

0000005

John,

Regarding Magnolia Park Legends, have you had a rater change? Cal Living said they are not doing the HERS rating on this project. Do you know who the rater is and what HERS provider they are using? We are unable to locate this project in the provider database.

Thank you,

Evonne



Evonne Revitt  
PG&E  
1955 41st Avenue, Suite B-2  
Capitola, CA 95010  
ph: (916) 213-4032  
FAX: (831) 479-5806

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**8 attachments**

-  **2007PulteMagPkGrovesRFP.pdf**  
98K
-  **2007PulteMagPkGrovesAcpt.pdf**  
41K
-  **2007PulteMagPkGablesRFP.pdf**  
110K
-  **2007PulteMagPkGablesAcpt.pdf**  
41K
-  **2007PulteToscanaRFP.pdf**  
74K
-  **2007PulteToscanaAcpt.pdf**  
41K
-  **2007PulteAvondaleRFP.pdf**  
85K
-  **2007PulteAvondaleAcpt.pdf**  
41K

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**0000006**



# CALIFORNIA LIVING & ENERGY<sup>SM</sup>

A Division of William Lilly &amp; Associates, Inc.

TITLE 24 COMPLIANCE-RESIDENTIAL/NON-RESIDENTIAL

3015 DALE COURT

CERES, CA 95307

209-538-2879 / FAX: 209-538-2885

## Title-24/Energy Star Experts

May 22, 2006

Pulte Home Corp.

6210 Stoneridge Mall Rd. 5<sup>th</sup> flr

Pleasanton, CA 94588

925-249-3315 FAX 925-249-4374

Name to Put On Title - 24: \_\_\_\_\_

Total Price Including Bond: \$ 0.00

## Title-24/Energy Star Experts

We will start printing at signed approval.

Square footage of plans correct?

All options included?

If all data below is acceptable, please sign.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Contractor License # \_\_\_\_\_

PO Required? ☐ No ☐ Yes # \_\_\_\_\_

Re: Wyndam @ Mountain House, CA

## EFL-GOLD & ENERGY STAR 2005 Code Compliance

% Above Code		16.8%	20.1%	20.9%	16.1%
<u>Plan:</u>		2079	2080	2081	Casita
INSULATION	w/1 inch stucco foam	<u>3426</u>	<u>3858</u>	<u>3914</u>	<u>432</u>
	Attic/Vault	R-30/R-30	R-30/R-30	R-30/R-30	R-30/R-30
	Wall 2x4	R-13	R-13	R-13	R-13
	Wall 2x6	R-19	R-19	R-19	N/A
	KW	N/A	N/A	N/A	N/A
	Floor @ 2 <sup>nd</sup> Flr Overhang	R-19	R-19	R-19	N/A
	Raised or Slab Floor?	Slab	Slab	Slab	Slab
EER-SEER Value		11.0-13.0	11.0-13.0	11.0-13.0	HP 11.0-13.0 Split
AFUE		0.80	0.80	0.80	7.7 HSPF Split
H V A	Duct Insulation	R-6.0	R-6.0	R-6.0	N/A
	Sensible Min. BTU	42744	42308	38776	7355
	Designed Cooling Capacity	50456	49932	45764	8820
	Heating Min. BTU	67154	64127	64721	10285
Hers Verifications	Suggested Tonnage	6.0	6.0	5.5	N/A
	Fan Wattage Verification?	No	No	No	No
	Duct Testing Required?	Yes	Yes	Yes	No
	TXV Valve Inspection?	Yes	Yes	Yes	Yes
	EER Verification?	Yes	Yes	Yes	Yes
	Infiltration?	No	No	No	No
	Max Cooling Capacity	No	No	No	No
	Airflow Verification?	No	No	No	No
	Buried Ducts Verification?	No	No	No	No
	Surface Area Verification?	No	No	No	No
H <sub>2</sub> O	Insulation Inspection?	Yes	Yes	Yes	Yes
	Pipe Insulation?	No	No	No	No
	H <sub>2</sub> O EF (gal wh)	0.76RE(75)	0.76RE(75)	0.76RE(75)	0.60(50)
	H <sub>2</sub> O Blanket	R-12	R-12	R-12	No
Glazing %		23.0	19.7	16.6	38.0
GLASS	Windows - Low E <sup>2</sup>	<u>U-Value</u>	<u>SHGC</u>		
	XO/SH	.35	.30		
	Fixed	.34	.33		
	Sliding Glass Door	.35	.31		
	French Door	.41	.25		

0000007

Contractor: California Living and Energy estimate of costs of items on this data sheet is the best estimate at the time of the Data sheet being completed and California Living and Energy is not responsible for its accuracy. (e.g. a mechanical contractor will not give an accurate estimate of cost changes if he already has the contract for the project.) Upon acceptance of Data/Title-24.

NOTE TO BUILDERS: A HERS certified Rater is required to perform all tests & inspections. Section 106.3.5 of the California Building Code (2nd paragraph) says, "The special inspector shall be employed by the owner, the engineer or architect of record, or an agent of the owner, but not the contractor or any other person responsible for the work." None of these requirements are waived for any contractor or rater.

**From:** "Bill Lilly" <bill.lilly@califliving.com>  
**To:** "Tav Commins" <Tcommins@energy.state.ca.us>  
**Date:** 1/19/2007 12:24:43 PM  
**Subject:** Re: MASCO

Tav

Sorry it has taken so long to get this info to you. We just got this Wednesday. As you can see from the communication between John Kindorf of Pulte and Evonne Revitt of Pg&E, Masco clearly has the HERS contract for Wyndam and Stratford Communities. Regardless of the subsidiary name they use, MCS, Energy Sense etc it still is addressed as Masco, it is all interrelated. David Short and Rich Dunn still use the Masco e-mail address. I am also e-mailing what we compiled the calcs with for Wyndam. I suggest you call Evonne or Linda Turkatte at PG&E for more detailed information on other subdivisions Masco is providing the HERS rating. there is financial connection between all of their legal entities as well as a real world connection.

Please keep me updated.

Bill

PS: I would like to talk to you about why we believe in 100% 3rd party testing and what an easy sell it has been with the Builder

On 1/19/07, Tav Commins <Tcommins@energy.state.ca.us> wrote:

>  
> Have you been able to find any advertising from MASCO?  
>  
> Tav  
>

--

President  
California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
www.califliving.com  
(209) 538-2879 x11

**CC:** Larry <larry.stubbert@califliving.com>, Dick <dick.snedden@califliving.com>, "Randy Chaffey" <randy.chaffey@califliving.com>

0000008

**William Staack - Fwd: Fw: Masco**

---

**From:** Tav Commins  
**To:** Mark Alatorre; William Staack  
**Date:** 2/8/2008 8:19 AM  
**Subject:** Fwd: Fw: Masco

---

Second complaint

>>> "Gordon Beall" <foservices@comcast.net> 2/7/2008 12:08 PM >>>  
 Tav,

I also emailed the CEC re: MASCO about 2 years ago, after attending a class that had MASCO "raters" in it, and got no response. They were blatant about the fact that they just "set up another corporation" to get around the requirements.

I could go on and on about this, but this kind of fraud is wide spread and the CEC seems to turn a blind eye to it.

The general trend among many contractors and many raters, us how to get away with as much as possible.

Gordon Beall  
 Fair Oaks Services  
 1274 Bryn Mawr Drive  
 Yuba City, CA 95993  
 (916) 212-9698

----- Original Message -----

From: "DAVE HEGARTY" <davehegarty@ducttesters.com>  
 To: "Tav Commins" <Tcommins@energy.state.ca.us>  
 Cc: <geoedb@idiom.com>; <golferjohn@starstream.net>;  
 <gmahoney@cityofdavis.org>; <gary@dougbeaman.com>; <foservices@comcast.net>;  
 <hersrater@sbcglobal.net>; <jennifer@hersolar.com>; <jamader@rhainc.com>;  
 <mikbet@sti.net>; <donn@greenhomesavvy.com>; "Allen Amaro"  
 <amaroconstruction@yahoo.com>; <hvacconsultant@msn.com>  
 Sent: Thursday, February 07, 2008 11:46 AM  
 Subject: FW: Masco

> Tav; for your files and add one more rater as concerned for their (Masco)  
 > violation of conflict of interest. If everyone would contact the CEC  
 > about  
 > this, the issue would be brought to a head. dave  
 >

> -----Original Message-----

> From: George J. Nesbitt [mailto:geoedb@idiom.com]  
 > Sent: Thursday, February 07, 2008 10:57 AM  
 > To: DAVE HEGARTY  
 > Cc: Tcommins@energy.state.ca.us  
 > Subject: Re: Masco

>  
 > Great job.  
 > When I went through the 2005 update training there were several MASCO

0000009

> Raters  
 > in the class. I don't know if previously they only owned product  
 > manufacturing. The subject of there buying install companies came up and  
 > the  
 > conflict of Rating jobs with installations by MASCO subcontractors. I  
 > guess  
 > I now know how it was (wasn't) handled.  
 > All MASCO HERS Verifications should be disqualified, and given to truly  
 > independent Raters.  
 >  
 > DAVE HEGARTY wrote:  
 >  
 >  
 >  
 > Tav: sorry this took so long to get out. I am writing you to remind  
 > you that Masco's Energy Sense is doing all of D R Horton work for Rating  
 > and  
 > that, in Manteca, they (MASCO) are rating their own work as in Sacramento  
 > Building Products installation of insulation and D R Horton's QII  
 > measures.  
 > They (Masco) are doing the rating for Western Insulation and Coast as  
 > well.  
 > All Companies owned and operated by MASCO and profits relating to these  
 > Companies flow into the MASCO conglomeration. I am in possession of  
 > evidence in the form of movies and still pictures of the work being done  
 > at  
 > D R Horton, which shows the quality of the work being done and does not  
 > meet  
 > the QII measures standards from my perspective. It is with the greatest  
 > of  
 > concern and frustration that I call your attention to this matter. It is  
 > our greatest desire to call attention to this travesty and our  
 > understanding  
 > of CEC rules and guidelines and that MASCO is being allowed to continue to  
 > RATE for themselves and the clients that they can and do sway with energy  
 > measures to capture the insulation work of those clients. Why else would  
 > Masco spend the time, energy and money to develop a portion of their  
 > business that brings the least profit to their entire business model.  
 > Their  
 > interests reside in the reduction of cost to their client (and  
 > themselves),  
 > if they are used as the rater as opposed to legitimate raters with no  
 > secondary interest, and the protection Masco gets from SELF RATING in  
 > connection with sampling. Has Masco documented any time when they have  
 > asked  
 > the installation side to REWORK or has not passed the QII measures? The  
 > pictures I have, prove at least one thing, and that is that QII is not  
 > being  
 > taken seriously by Masco when it is their own installation (when one of  
 > their own companies is doing the install). We asked the Builder to see  
 > the  
 > CF6R forms and the CF4R forms for the installation, he did not understand  
 > or  
 > recognize our request. Of course this could have been a cautious reaction  
 > to priority information, but I was convinced that he had no knowledge of  
 > the  
 > forms. It is a daily task and expense for our Rater companies to get the  
 > CF6R forms for each house under a Masco insulation contract. We struggle  
 > everyday to get them to respond to CEC rules on CF6R forms for each house

0000010

> to  
 > provide sample groupings and "tested" houses. It is Masco employees'  
 > knowledge that no one comes behind them to insure proper insulation  
 > installation and to fill out the CF6R for each house, just interview any  
 > onsite employee, they will let you know that never happens. Does Masco  
 > possess any documentation of failure or correction, and doesn't CEC rules  
 > and interpretations require it as a "perceived compromise" candidate.  
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 > At the very least, the quotes below are appropriate and provide a  
 > clear intent, especially under the Providers and their responsibility to  
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 > respond to this situation in a clear and timely manner? We appreciate  
 > your  
 > attention to this matter.  
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 > they are serving as special  
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 > inspectors for local building departments. By law HERS raters must  
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 > are verifying. Section  
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 > 106.3.5 of the CBC prohibits a special inspector from being employed  
 > (by contract or other  
 >  
 > means) by the contractor who performed the work that is being  
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 > required to provide ongoing monitoring of the propriety and accuracy  
 > of HERS raters in the

0000011



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- > performance of their duties and to respond to complaints about HERS
- > rater performance. In
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- > cases where there may be real or perceived compromising of HERS
- > rater independence, they
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- > are responsible for providing increased scrutiny of the HERS rater,
- > and taking action to ensure
- >
- > objective, accurate reporting of diagnostic testing and field
- > verification results, in compliance
- >
- > with Energy Commission adopted procedures.
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- > Building
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- > Dave Hegarty
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**0000012**

## William Staack - Re: Masco

---

**From:** Tav Commins  
**To:** Bill Lilly; DAVE HEGARTY; Mark Alatorre; William Staack  
**Date:** 2/5/2008 9:08 AM  
**Subject:** Re: Masco

---

Dave

Thanks for the e-mail below. Can you send me some of the pictures?

My co-worker Mark will be taking over this project and putting together the letter. We will try to complete the letter this week and send to MASCO.

Tav

>>> "DAVE HEGARTY" <davehegarty@ducttesters.com> 2/4/2008 3:17 PM >>>

Tav: sorry this took so long to get out. I am writing you to remind you that Masco's **Energy Sense** is doing all of D R Horton work for Rating and that, in Manteca, they (MASCO) are rating their own work as in Sacramento Building Products installation of insulation and D R Horton's QII measures.

They (Masco) are doing the rating for Western Insulation and Coast as well. All Companies owned and operated by MASCO and profits relating to these Companies flow into the MASCO conglomeration. I am in possession of evidence in the form of movies and still pictures of the work being done at D R Horton, which shows the quality of the work being done and does not meet the QII measures standards from my perspective. It is with the greatest of concern and frustration that I call your attention to this matter. It is our greatest desire to call attention to this travesty and our understanding of CEC rules and guidelines and that MASCO is being allowed to continue to RATE for themselves and the clients that they can and do sway with energy measures to capture the insulation work of those clients. Why else would Masco spend the time, energy and money to develop a portion of their business that brings the least profit to their entire business model. Their interests reside in the reduction of cost to their client (and themselves), if they are used as the rater as opposed to legitimate raters with no secondary interest, and the protection Masco gets from SELF RATING in connection with sampling. Has Masco documented any time when they have asked the installation side to REWORK or has not passed the QII measures? The pictures I have, prove at least one thing, and that is that QII is not being taken seriously by Masco when it is their own installation (when one of their own companies is doing the install). We asked the Builder to see the CF6R forms and the CF4R forms for the installation, he did not understand or recognize our request. Of course this could have been a cautious reaction to priority information, but I was convinced that he had no knowledge of the forms. It is a daily task and expense for our Rater companies to get the CF6R forms for each house under a Masco insulation contract. We struggle everyday to get them to respond to CEC rules on CF6R forms for each house to provide sample groupings and "tested" houses. It is Masco employees' knowledge that no one comes behind them to insure proper insulation installation and to fill out the CF6R for each house, just interview any onsite employee, they will let you know that never happens. Does Masco possess any documentation of failure or correction, and doesn't CEC rules and interpretations require it as a "perceived compromise" candidate.

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**0000013**

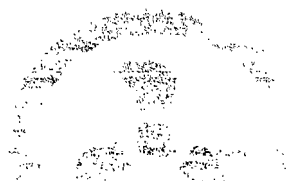
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CHEERS and CalCERTS have been approved by the Energy Commission to serve as HERS providers to certify and oversee HERS raters throughout the state. These providers are required to provide ongoing monitoring of the propriety and accuracy of HERS raters in the performance of their duties and to respond to complaints about HERS rater performance. In cases where there may be real or perceived compromising of HERS rater independence, they are responsible for providing increased scrutiny of the HERS rater, and taking action to ensure objective, accurate reporting of diagnostic testing and field verification results, in compliance with Energy Commission adopted procedures.

Building

Dave Hegarty

**DuctTesters**  
by Dave Hegarty



**0000014**

**William Staack - Re: Masco**

**From:** "Bill Lilly" <bill.lilly@califliving.com>  
**To:** "Tav Commins" <Tcommins@energy.state.ca.us>  
**Date:** 2/5/2008 10:55 AM  
**Subject:** Re: Masco  
**CC:** "DAVE HEGARTY" <davehegarty@ducttesters.com>, "Mark Alatorre" <Malatorr@energy.state.ca.us>, "William Staack" <Wstaack@energy.state.ca.us>

Tav & Mark

Thanks for your concern. I can not stress enough how important I believe Masco's violation of the Standards are.

I talked to Hoffman Insulation yesterday and they said that MASCO is using a point system rebate for services provided on subdivisions which include installing insulation and inspecting HQI. Hoffman will try to get a copy of Masco's program. I will forward it to you as soon as I get it.

Bill

On 2/5/08, **Tav Commins** <Tcommins@energy.state.ca.us> wrote:

Dave

Thanks for the e-mail below. Can you send me some of the pictures?

My co-worker Mark will be taking over this project and putting together the letter. We will try to complete the letter this week and send to MASCO.

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0000015

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At the very least, the quotes below are appropriate and provide a clear intent, especially under the Providers and their responsibility to "increased scrutiny" of such raters. Thanks for listening. Could CEC respond to this situation in a clear and timely manner? We appreciate your attention to this matter.

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Building

**0000016**

Dave Hegarty

**Duct Testers**  
by Dave Hegarty

--  
Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct  
Ceres, Ca. 95307  
209-538-2879 x11

**0000017**

## William Staack - Fwd: Masco violations

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**From:** Tav Commins  
**To:** Mark Alatorre; William Staack  
**Date:** 2/8/2008 8:18 AM  
**Subject:** Fwd: Masco violations

---

See complaint below

>>> Allen Amaro <amaroconstruction@yahoo.com> 2/8/2008 7:28 AM >>>  
Tav, (HERS Testing and Field Varafications)MASCO. The  
spirt an intent of the law is that no conflict of  
interest should exist. As we all know this subject has  
been brought to the attention of the CEC and others to  
no avail, there is a feduciary responsibility by the  
proper state agencies after notification to  
investigate complaints (ETC).Please register my  
concerns as an offical compliant,if I need an offical  
form to do this please direct me to the proper agency.  
Thanks Allen Amaro

0000018

## William Staack - Fwd: Re: Masco

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**From:** Tav Commins  
**To:** Mark Alatorre; William Staack  
**Date:** 2/8/2008 8:20 AM  
**Subject:** Fwd: Re: Masco  
**Attachments:** geodb.vcf

---

4th complaint

>>> "George J. Nesbitt" <geodb@idiom.com> 2/7/2008 10:57 AM >>>

Great job.

When I went through the 2005 update training there were several MASCO Raters in the class. I don't know if previously they only owned product manufacturing. The subject of there buying install companies came up and the conflict of Rating jobs with installations by MASCO subcontractors. I guess I now know how it was (wasn't) handled.

All MASCO HERS Verifications should be disqualified, and given to truly independent Raters.

DAVE HEGARTY wrote:

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Building

Dave Hegarty

**DuctTesters**  
by Dave Hegarty



0000020

**William Staack - Fwd: FW: Masco**

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**From:** Tav Commins  
**To:** Mark Alatorre; William Staack  
**Date:** 2/8/2008 8:20 AM  
**Subject:** Fwd: FW: Masco

---

3rd complaint

>>> "DAVE HEGARTY" <davehegarty@ducttesters.com> 2/7/2008 11:46 AM >>>  
 Tav; for your files and add one more rater as concerned for their (Masco)  
 violation of conflict of interest. If everyone would contact the CEC about  
 this, the issue would be brought to a head. dave

-----Original Message-----

From: George J. Nesbitt [mailto:geoedb@idiom.com]  
 Sent: Thursday, February 07, 2008 10:57 AM  
 To: DAVE HEGARTY  
 Cc: Tcommins@energy.state.ca.us  
 Subject: Re: Masco

Great job.

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0000021

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**0000022**

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and taking action to ensure

objective, accurate reporting of diagnostic testing and field  
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with Energy Commission adopted procedures.

Building

Dave Hegarty

**0000023**

**Corporate Office**  
3015 Dale Court  
Ceres, CA 95307  
(209) 538-2879  
(209) 538-2885 Fax



**CALIFORNIA  
LIVING & ENERGY**  
Title 24 Compliance - Residential/Non Residential

**Southern California Office**  
31900 Mission Trail, Suite 130  
Lake Elsinore, CA 92530  
(951) 471-1443  
Fax (951) 471-1887

Date: March 12, 2008

To: William Pennington  
California Energy Commission  
1516 Ninth Street  
Sacramento, Ca. 95814-5512

William Staack  
Senior Staff Counsel  
1516 Ninth Street  
Sacramento, Ca. 95814-5512

**Re: Financial and Perceived Conflict of Interest under the California Home Energy Rating System (HERS) Program**

Dear Sirs

Per our communication, verbal and written, since March 10, 2005 I have consistently brought to you and others at the California Energy Commission evidence of MASCO violation of the Standards as set fourth in 2005 Residential Compliance Manual and other publications. The evidence that was brought to your attention directly relates to the financial conflict and collusion between MASCO and its subsidiaries performing independent 3<sup>rd</sup> party testing. This could have been address in the beginning when the Provider contacted Douglas Beaman and Associates to investigate the conflict of interest. Like everything else their report was put on the shelf. The former Director of CHEER, Tom Hamilton stated, "As such MASCO can do what they want as long as the program does not include any HERS required verification according to the CEC guidelines". MASCO sells and installs many products on subdivisions, which creates an obvious financial conflict when they test and/or inspect those installations.

In October 2002 you wrote "Independent third party field verification is required for the Standards that require such verification. The MASCO quality control does not satisfy this requirement." Even though the subject of my question and your response is related to MASCO's EFL program the situation that started this investigation has not changed. In fact, MASCO has continued to demonstrate a blatant disregard for the Standards as set forth and passed by the California Energy Commission. California Energy Commission has stated in many different forums the concept of an independent 3<sup>rd</sup> Party Rater and how important it is for the integrity of the inspection process on new construction and to the benefit of the consumer. MASCO with its wholly owned subsidiaries has ignored this

**0000024**

Standard to the detriment and disregard of the homebuyer and energy conservation in California.

The purpose of our meeting is to bring documentation showing there is a financial (as well as perceived financial conflict) arrangement between MASCO and its subsidiaries therefore violating the Standards as set forth by the CEC and the State of California. This makes a mockery of the trust of the citizens of our State when a large Corporation can disregard the Standards that protect the consumer. I have divided the evidence as follows:

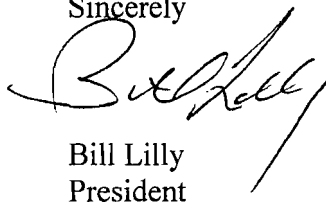
---

- A1. Pulte Homes e-mail regarding MASCO Conflict of interest
- A2. CEC letter to Dave Bell, President of MASCO's Energy Sense
- A3. Letter to the CEC from Dave Bell
- A4. Insurance certificate demonstrating financial connection between Insulation Company and MASCO
- A5. Private Investigator's report on Masco Contractor Service
- A6. Copy of Business card showing connection between MASCO and Sacramento Building Products
- A7. Supporting e-mail with a copy of a promotion to package all of MASCO services including HERS testing.
- A8. Copy of State Energy Standards MASCO violated

Based on the attached information and California's written statute the CEC needs to issue a cease and desist order to MASCO and its subsidiaries to stop all 3<sup>rd</sup> Party testing in the State of California as soon as possible.

California needs to stand up against a large Corporation like MASCO to send a message to other States such as Arizona that the consumer cannot be deceived or exploited. The fox will no longer be guarding the chicken coop.

Sincerely



Bill Lilly  
President

Cc: Galo LeBron, Energy Inspectors  
Scott Johnson, Action Now  
Dave Hagarty, Duct Testers

0000025

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(951) 471-0346



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*A division of William Lilly and Assoc. Inc.*

Title 24 Compliance-Residential/Non-Residential  
3015 Dale Ct. Ceres, CA 95307  
**Southern California Office:**  
31900 Mission Trails, Suite 242  
Lake Elsinore, Calif. 92530

ENERGY CONSULTING  
Duct Testing 3<sup>rd</sup> Party HERS Rater  
Insulation Inspection & Certification  
Mechanical & Engineering Design  
Fax (209) 538-2885  
(951) 471-1887

## Supporting Documentation of MASCO Violation

- A1. Pulte Homes e-mail regarding MASCO Conflict of interest
- A2. CEC letter to Dave Bell of MASCO's Energy Sense
- A3. Letter to Tav Commings of CEC from Dave Bell
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- A6. Copy of Business card showing connection between MASCO and Sacramento Building Products
- A7. Supporting e-mail
- A8. Copy of State Energy Standards MASCO violated

**0000026**

Bill Lilly

---

**From:** Bill Lilly [bill.lilly@califliving.com]  
**Sent:** Friday, March 31, 2006 11:39 AM  
**To:** Bill Pennington  
**Cc:** Mike Bachand; California Energy Commission; John Eash; Jeff; Larry; Bill H; Anita; Dick; thamilton@cheers.org  
**Subject:** 3rd party violation

A1

Bill

In October of 2002 you wrote me stating that "... The MASCO quality control process does not satisfy this requirement." With your response I mistakenly thought that this situation would not come up again. Well, it has.

Another part of the 3rd party agreement state "...HERS raters cannot have any financial interest in the Builder's or contractor's business...". This is exactly what is happening in Pulte's Altura project in San Jose and Toscana and Avondale @ Mountain House. Coast Building Products (an insulation company) has the independent 3rd party agreement for Altura. Coast is installing and repairing their products on this project therefore are not independent. They have a financial interest in this project and can not be classified as independent 3rd party. Suppose (this is make believe and will never happen) the Builder said unless you pass this house you may not get the next sub-contract for the next phase.

As you can see in this e-mail I told Pulte I will contact the CEC regarding this violation and I left the items concerning this for your review.

I am going to send this to you by snail mail to illustrate the importance of this matter. Several years ago MASCO offered to buy my firm and in my opinion to control the market, it was no then and it is still no.

See 2nd issue and 3rd issue in my e-mail to Robert Dauth

Thanks

Bill

Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax  
bill.lilly@califliving.com  
www.califliving.com

-----Original Message-----

**From:** Bill Lilly [mailto:bill.lilly@califliving.com]  
**Sent:** Friday, March 10, 2006 12:44 PM

0000027



To: Robert Dauth; Deb Heden; Gary Oertel  
Cc: Rich Giometti; Jeff; Dick; Anita; Larry Stubbart; Bill Holbrook  
Subject: RE: Altura bid & 3rd party

Robert

I thought the issue regarding 3rd party testing was resolved when Bill Pennington at the CEC ruled against Masco's EFL system several years. This is a little different in form then the previous ruling therefore I will need get confirmation from the CEC. Thanks for the understanding  
Bill

-----Original Message-----

From: Bill Lilly [mailto:bill.lilly@califliving.com]  
Sent: Wednesday, March 08, 2006 11:11 AM  
To: Robert Dauth  
Cc: Rich Giometti; Jeff; Dick; Anita; Larry Stubbart; Bill Holbrook  
Subject: Altura bid & 3rd party

Robert

2nd issue

There is a independent 3rd party requirement in the State of California. We have gone over this several times with the CEC and sub-contractors such as insulators can not perform independent 3rd party testing on a subdivision that they have a financial interest in. Under the State statue the sub-contractor can not install or repair anything on a subdivision where they are the 3rd party inspectors. This law has been reviewed and up held by the State.

3rd issue/Liability

The next issue is suppose Pulte Homes is sued by a Home Owner (we know this will never happen) who complains about some sort of energy problem. It will help you the Builder to state that you hired somebody who does not install or repair any energy related product such as HVAC, insulation, fireplaces etc. to inspect their house. You need to have somebody who is really independent and who can testify in court for you, if needed. We carry Error and Omission Insurance they don't.

4th issue

Oh yea, if price is an issue then talk to us.

Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11

0000028

**(209) 538-2885 Fax**  
**bill.lilly@califliving.com**  
**www.califliving.com**

**-----Original Message-----**

**From: Robert Dauth [mailto:Robert.Dauth@Pulte.com]**  
**Sent: Wednesday, March 08, 2006 7:06 AM**  
**To: Bill Holbrook**  
**Cc: Larry Stubbart**  
**Subject: RE: Altura**

**Yes, it was the HERS bid. Coast Building Products was awarded the HERS inspections for both Altura and Devon Square. The decision was made largely due to the fact that that CL&E can no longer get primary wording in their insurance certificates. The other factor was price, their bid to perform the inspection was more competitive. Hope this helps Bill, let me know if there are any additional questions or concerns. Thanks.**

**Robert**

**0000029**

## Christine Weeks

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From: John Kindorf [John.Kindorf@Pulte.com]  
Sent: Wednesday, March 29, 2006 11:55 AM  
To: Christine Weeks  
Subject: RE: Toscana @ Mountain House

Masco was awarded the energy star testing at Avondale and Toscana due to insurance issues with California Living & Energy which I believe have since been resolved. Sorry for the confusion.

-----Original Message-----

From: Christine Weeks [mailto:christine.weeks@califliving.com]  
Sent: Wednesday, March 29, 2006 11:44 AM  
To: John Kindorf  
Cc: Bill Holbrook (E-mail); Larry Stubbert (E-mail)  
Subject: Toscana @ Mountain House

John:

The testing department is trying to set up this project, so that when the super calls for testing we are ready, in doing this we discovered that we don't have a signed bid for testing. Please sign and mark payment method and then fill out the Information Request page and either fax or e-mail signed bid back to me.

Thanks,  
Christine Weeks  
Marketing & Sales Assistant  
California Living and Energy  
christine.weeks@califliving.com  
209-538-2879 Ext. 13

CONFIDENTIALITY NOTICE: This email may contain confidential and privileged material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you have received this communication in error, please notify the sender immediately by email and delete the message and any file attachments from your computer. Thank you.

0000030

payment provided the contract ensures that monies paid by the builder to the HERS rater can be traced through audit. It is critical that such a "three-party contract" preserves rater independence in carrying out the responsibilities specified in Energy Commission-adopted field verification procedures. Even though such a "three-party contract" is not on its face in violation of the requirements of the Energy Commission, the closer the working relationship between the HERS rater and the sub-contractor whose work is being inspected, the greater the potential for compromising the independence of the HERS rater.

CHEERS and CalCERTS have been approved by the Energy Commission to serve as HERS providers to certify and oversee HERS raters throughout the state. These providers are required to provide ongoing monitoring of the propriety and accuracy of HERS raters in the performance of their duties and to respond to complaints about HERS rater performance. In cases where there may be real or perceived compromising of HERS rater independence, they are responsible for providing increased scrutiny of the HERS rater, and taking action to ensure objective, accurate reporting of diagnostic testing and field verification results, in compliance with Energy Commission adopted procedures.

Building officials have authority to require HERS raters to demonstrate competence, to the satisfaction of the building official. Building officials should place extra scrutiny on situations where there may be either real or perceived compromising of the independence of the HERS rater, and exercise their authority to disallow a particular HERS rater from being used in their jurisdiction or disallow HERS rater practices that the building official believes will result in compromising of HERS rater independence.

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## **2.5 Field Verification and/or Diagnostic Testing**

This section describes some of the procedures and requirements for field verification and/or diagnostic testing of energy efficiency features. This section is just an overview; details are available in the documents described below.

Field verification and/or diagnostic testing are performed by special third-party inspectors. The Energy Commission has given this responsibility to the HERS raters, who are specially trained and certified to perform these services. HERS raters cannot be employees of the builder or contractor whose work they are verifying. Also HERS raters cannot have financial interest in the builder's or contractor's business or advocate or recommend the use of any product or service that they are verifying.

### **2.5.1 Measures Requiring Field Verification and/or Diagnostic Testing**

The following features require field verification and/or diagnostic testing:

- Duct sealing
- Supply duct location, surface area and R-factor
- Refrigerant charge in split system air conditioners and heat pumps
- Installation of TXV
- Adequate air flow

**0000031**

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#### Example 2-6

##### Question

What is my responsibility with respect to the CF-6R (Installation Certificate) (a) as an inspector and (b) as a builder?

##### Answer

The building inspector is responsible for checking the CF-6R at appropriate inspections to be sure it is filled out and signed for the completed work. Inspectors can verify that the installed features are "consistent with approved plans," as indicated on the Certificate of Compliance (CF-1R) form. Since the CF-6R may be posted at the job site or kept with the building permit, the inspector can request that this form be made available for each appropriate inspection. It is not advisable to wait until the final inspection to check the CF-6R (§10-103).

The general contractor, or his/her agent (such as the installing contractor), takes responsibility for completing and signing the form for the work performed. (A homeowner acting as the general contractor for a project may sign the CF-6R.) The compliance statement for their signature indicates that the equipment or feature: 1) is what was installed; 2) is equivalent or more efficient than required by the approved plans (as indicated on the CF-1R); and 3) meets any certification or performance requirements (§10-103).

#### Example 2-7

##### Question

I heard that there are conflict-of-interest requirements that HERS raters must abide by when doing field verification and diagnostic testing. What are these requirements?

##### Answer

HERS raters are expected to be objective, independent, third parties when they are fulfilling their duties as field verifiers and diagnostic testers. In this role they are serving as special inspectors for local building departments. By law HERS raters must be independent entities from the builder or subcontractor installer of the energy efficiency features being tested and verified. They can have no financial interest in the installation of the improvements. HERS raters can not be employees of the builder or subcontractor whose work they are verifying. Also, HERS raters cannot have any financial interest in the builder's or contractor's business or advocate or recommend the use of any product or service that they are verifying. Section 106.3.5 of the CBC prohibits a special inspector from being employed (by contract or other means) by the contractor who performed the work that is being inspected.

The Energy Commission expects HERS raters to enter into a contract with the builder (not with sub-contractors) to provide independent, third-party diagnostic testing and field verification, and the procedures adopted by the Energy Commission calls for direct reporting of results to the builder, the HERS provider, and the building official. Although the Energy Commission does not recommend it, a "three-party contract" with the builder is possible, provided that the contract delineates both the independent responsibilities of the HERS rater and the responsibilities of a sub-contractor to take corrective action in response to deficiencies that are found by the HERS rater. Such a "three-party contract" may also establish a role for a sub-contractor to serve as contract administrator for the contract, including scheduling the HERS rater, invoicing, and

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512  
www.energy.ca.gov



May 15, 2007

A2

Mr. David R. Bell  
President – EnergySense  
14655 Northwest Freeway, Suite 102  
Houston, TX 77040

**RE: Possible Conflict of Interest under the California Home Energy Rating System (HERS) Program**

Dear Mr. Bell:

Thank you for your letter (which was not dated) responding to the California Energy Commission staff's (henceforth referred to as staff) concerns that a potential conflict of interest under the California Home Energy Rating System Program (HERS) exists between EnergySense and its parent company Masco Corporation and one or more of Masco subsidiaries. Under the HERS regulations, California Code of Regulations, title 20, sections 1670 through 1675, there is no conflict of interest if (1) providers<sup>1</sup> are legally independent entities from the raters<sup>2</sup> who provide field verification and diagnostic testing, and (2) providers and raters are legally independent entities from the builders, and subcontractors who install energy efficiency improvements that are field verified and or diagnostically tested under the HERS program.

From the facts provided in your letter, it appears that EnergySense would be considered a rater under the HERS regulations (Cal. Code Regs., tit. 20, § 1671) because it provides the raters to conduct site inspection for data collection, field verification, and diagnostic testing required for demonstrating compliance with the Title 24 energy performance standards. Also as stated in your letter, EnergySense uses raters that are certified by and registered with CHEERS, a HERS provider under California Code Regulations, title 20, section 1671.

It is staff's understanding that EnergySense is a subsidiary under corporate control of parent company, Masco Corporation and that Masco Corporation, has subsidiaries under its corporate control (e.g., Masco Services Group Corporation, Builder Services Group, Inc. and American National Services) that participate in the HERS Program. It is staff's

<sup>1</sup> Providers means an organization that administers a home energy rating system in compliance with ... [the HERS Regulations] Cal. Code Regs., tit. 20, §1671.

<sup>2</sup> Rater means a person performing the site inspection and data collection required to produce a home energy rating or the field verification and diagnostic testing required for demonstrating compliance with the Title 24 energy performance standards. . . Cal. Code Regs., tit. 20, § 1671.

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understanding that the nature of the Masco Corporation structure operating under the HERS program is as follows:

1. The parent Masco Corporation is a supplier of energy efficiency products that are installed under the HERS program;
2. The subsidiary Masco Services Group Corporation and its subsidiaries, Builder Services Group, Inc. and American National Services, are installers of energy efficient products that include products produced by parent Masco Corporation, and
3. The subsidiary, EnergySense, provides raters to conduct site inspection, data collection, HERS field verification, and diagnostic testing required for demonstrating compliance with the Title 24 energy performance standards of products produced by the parent Masco Corporation, and installed by subsidiaries Builder Services Group, Inc. and American National Services.

A conflict of interest exists under California Code of Regulations, title 20, section 1673 (i)(2) if a rater is not an independent entity from the builder and from the subcontractor who install energy efficiency improvements under the HERS program.<sup>3</sup> An independent entity as defined in CCR title 20 section 1671 means having no financial interest in and not advocating or recommending the use of any product or service as a means of gaining increased business.<sup>4</sup> Financial interest means an ownership interest, debt agreement, or employer/employee relationship, but does not include ownership of less than 5% of the outstanding equity securities of a publicly traded corporation. (Cal. Code Regs., tit. 20, §1671)

Without supplementary documentation provided to the contrary, it appears that a violation of the conflict of interest provision under the HERS regulations could exist between EnergySense and various entities under the Masco Corporation structure because of the following presumptions:

1. Parent company Masco Corporation, a supplier of energy efficiency products installed under the HERS program, has a financial interest as defined under California Code of Regulations, title 20, section 1671 in its subsidiaries EnergySense (a HERS rater), Masco Services Group Corporation (a HERS installer) and its subsidiaries, Builder Services Group, Inc (a HERS installer) and American National Services (a HERS installer).

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<sup>3</sup> Cal. Code Regs., tit. 20, §1673 (i) Conflict of Interest.

(2) Providers and raters shall be independent entities from the builder and from the subcontractor installer of energy efficiency improvements field verified or diagnostically tested. Emphasis added.

<sup>4</sup> Cal. Code Regs., tit. 20, §1671: Independent Entity means having no financial interest in, and not advocating or recommending the use of any product or service as a means of gaining increased business with, firms or persons specified in Section 1673(i). Note: The definitions of "independent entity" and "financial interest," together with Section 1673(i), prohibit conflicts of interest between providers and raters, or between providers/raters and builders/subcontractors

2. As a subsidiary of parent Masco Corporation, EnergySense may not be operating as an independent entity as defined in California Code of Regulations, title 20, section 1671 because it is under corporate control of its parent, Masco Corporation, and EnergySense may advocate and recommend the use of Masco's energy efficiency products installed under the HERS program or advocate and recommend the use of Masco Corporation subsidiaries that install energy efficiency products under the HERS program.

Please provide staff with the corporate structure that exists legally between parent Masco Corporation and subsidiary EnergySense with reference to the potential conflict of interest under the HERS regulations. Such information should include but is not limited to the following:

1. Percent of corporate voting shares that the parent, Masco Corporation, owns directly or indirectly through one or more of its subsidiaries, of subsidiary EnergySense.
2. Names of any persons that are employed as a board members and/or officers in more than one of the companies under the Masco Corporation structure including the parent and any subsidiaries that provide products or services under the HERS program.
3. Does parent Masco Corporation have corporate authority over its subsidiary EnergySense for any of the following?
  - (a) Selecting the directors.
  - (b) Appointing a majority of the members of the governing board.
  - (c) Using or directing the use of the individual assets of EnergySense to achieve the objective of the parent.
  - (d) To examine the financial reports and business plans, and to otherwise hold EnergySense and its management accountable for performance expectations of the parent.
  - (e) Have voting control provisions in EnergySense's articles of incorporation or provisions that prohibit amendments of the articles without the approval of the parent.
4. Did parent Masco Corporation prepare any of the bylaws defining the designation and authority of officers, their terms of office, and their removal (for cause or no cause) for EnergySense?
5. Do EnergySense's bylaws include procedures whereby parent Masco Corporation elects and removes directors or prohibit amendments of its bylaws without the parent Masco Corporation's approval?
7. Does parent Masco Corporation, or any of its subsidiaries have a debt agreement with EnergySense?
8. Does parent Masco Corporation, or any of its subsidiaries have any employees who are also employees of EnergySense?

0000035



9. Does parent Masco Corporation or any of its subsidiaries (other than EnergySense) mention EnergySense in any written, verbal, radio or television advertising or information? If so, please submit a copy of that information.
10. Does EnergySense mention parent Masco Corporation or any of its subsidiaries in any written, verbal, radio or television advertising or information? If so, please submit a copy of that information.
11. Does parent Masco Corporation or any of its subsidiaries (other than EnergySense) provide customer referrals to EnergySense? If so, please submit examples of the full range of referral messages that are provided.
12. Does EnergySense provide customer referrals to parent Masco Corporation or any of its subsidiaries? If so, please submit examples of the full range of referral messages that are provided.
13. Does parent Masco Corporation or any of its subsidiaries (other than EnergySense) mention in bid responses or price sheets any services provided by EnergySense? If so, please submit copies of these documents.
14. Does EnergySense mention in bid responses or price sheets any services provided by parent Masco Corporation or any of its subsidiaries? If so, please submit copies of these documents.

If you have any questions concerning this letter and the staff's request for supplemental information, please contact Bill Pennington, Building and Appliance Office, at (916) 654-4939.

Sincerely,

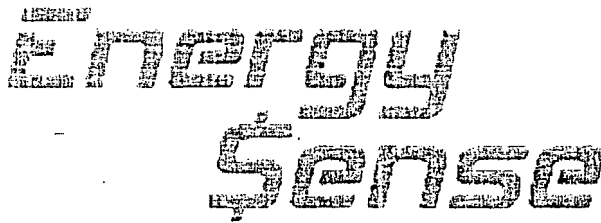
William Staack  
Senior Staff Counsel

WS/jm

cc: Dick Ratliff, Staff Counsel IV  
William Pennington, ERDA  
Tav Commings, ERDA

**0000036**

1-9-07  
letter to TAV  
C C E C  
A3



Dear Tav:

I write in response to your recent question about EnergySense, Inc.

EnergySense is a subsidiary of Masco Corporation and is in the process of being registered to do business in California. Masco is a multi-billion dollar public company and a leading provider of home improvement and building products and of installation services for insulation and other products. EnergySense was formed to provide inspection, testing, and other consulting services to builders, general contractors and subcontractors in residential and commercial construction. In California, these services include arranging for and administering energy ratings and energy efficiency field verification and diagnostic testing for purposes of EnergyStar, California's Title 24, and other energy efficiency programs offered by builders and others (such as the *Environments For Living*® program offered by another Masco subsidiary). EnergySense provides these services using raters who are appropriately trained and qualified and, for purposes of Title 24 testing and inspection, who are certified by and registered with CHEERS.

A sister Masco Company of EnergySense is Masco Services Group Corp. ("MSG"). MSG is a leading services company that, through its subsidiaries, installs insulation and a variety of other building products from over 300 locations across the United States, including in California. In California, these installation services are provided through its subsidiaries, Builder Services Group, Inc. and American National Services, Inc. and their respective subsidiaries. These various subsidiaries are sister companies of EnergySense. From time to time, EnergySense raters will inspect and/or test for purposes of Title 24 compliance installation work performed by a California branch of one of these sister companies (a "Branch"). In these instances, EnergySense would provide its services under, depending on the builder's preference, a contract with the builder; a three-party contract between the builder, the Branch and itself; or a contract with the Branch, which, in turn, would contract with the builder to provide installation services and independent inspection and/or testing services. The last situation is very much like a California Energy Commission (CEC) approved three-party contract, but allows the builder greater convenience and efficiency. EnergySense recently entered into a master subcontract agreement with Builder Services Group, Inc. and American National Services, Inc. for those instances where the builder selects the last alternative.

0000037

for insulation

Regardless of which option is selected, we believe that EnergySense can inspect and/or test installation work performed by a Branch for purposes of Title 24 consistent with the requirements set forth in 20 CCR 1673(i). According to Section 1673(i), the rater (the person performing the inspection or test) must be an "independent entit[y]" from the builder and (subcontractor installer) of the energy efficient improvement being tested or inspected. In Section 1671, an "independent entity" is defined as "having no financial interest in, and not advocating or recommending the use of any product or service as a means of gaining increased business with," the builder or subcontract installer of the energy efficient improvement being tested or inspected. Section 1671 also defines "financial interest" as "an ownership interest, debt agreement, or employer/employee relationship. Financial interest does not include ownership of less than 5% of the outstanding equity securities of a publicly traded corporation."

*Under these definitions, EnergySense's raters are independent entities from any Branch. They have no financial interest in any Branch – that is, they have no ownership interest in or debt agreement with, and are not employees of, any Branch. Moreover, they do not advocate or recommend to any builder that it use any Branch as a means by which to gain more business with that branch. Indeed, EnergySense's subcontract agreements with Builder Services Group, Inc. and American National Services, Inc. expressly preclude EnergySense and its raters from doing so. Similarly, under these definitions, EnergySense, as opposed to its raters, is an independent entity from any Branch. EnergySense, like MSG, is a direct subsidiary of Masco and, as such, has no financial interest in either MSG or any Branch.*

More importantly, EnergySense is confident that its raters can, and will, inspect the work of a Branch just as they would for the work of any other installer – objectively and independently. EnergySense expects its raters to conduct their tests and inspections honestly, independently, and in compliance with all applicable regulations and RESNET guidelines regardless of who the customer or installer may be. Indeed, the raters must do so in order to maintain their HERS certification according to agreements the rater signs with the HERS provider. In addition, EnergySense operates from locations separate from the Branches, and the branch managers of the EnergySense locations, who have direct oversight responsibility for the daily activities and operations of the raters, do not have any direct oversight or management responsibility for any Branch. Similarly, the managers of the Branches do not have any oversight or management responsibility for any EnergySense rater.

The independence and objectivity required and expected of EnergySense's raters in these situations is further demonstrated by the master subcontracts between EnergySense and Builder Services Group, Inc. and American National Services, Inc. These contracts provide that: EnergySense use only trained, qualified, experienced and certified raters who are registered with a HERS provider approved by the California Energy Commission. As extra oversight, CHEERS regularly monitors the test and inspection results of EnergySense's raters and, therefore, is in a position to identify and address any concern with the independence of an EnergySense rater in these situations. In this regard, earlier

this year when he was the Executive Director of CHEERS, Tom Hamilton expressed his view that EnergySense's structure and operation as outlined above would be consistent with the conflict of interest requirements of 20 CCR 1673(i) and the related regulations.

In sum, if EnergySense raters test or inspect any work of a Branch, they can do so in compliance with the requirements of 20 CCR 1673(i), and EnergySense's operation is designed to ensure independent and objective test and inspection results from its raters in these situations. In addition, since MASCO is a large publicly traded company, MASCO has dramatically more oversight than most companies and would not risk its reputation to gain business.

I hope that my explanation has been helpful. Please do not hesitate to contact me if you would like to discuss this matter further or would like additional information.

Sincerely,

David R. Bell  
President EnergySense  
(386) 763-4955

0000039

A 4

Thanks  
Bill

Setting the environment and course at a time

[illegible]

0000040

-917 (8-89) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED-OWNERS, LESSEES OR CONTRACTORS**  
**MASCO FORM RR**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART.**

	SCHEDULE
<b>Name of Person or Organization:</b> PACIFIC MOUNTAIN PARTNERS, INC. PACIFIC MOUNTAIN PARTNERS, LLC <del>AIRWAY VILLAS @ HIDDENBROOKE,</del> <del>LE</del> <i>PMP @ Creekside Meadows LLC</i> <del>PMP AT RIVER RANCH, LLC</del>	Any person or organization that the Named Insured is required to name as an Additional Insured by reason of a written contractual provision.

E: CREEKSIDE

WHO IS AN INSURED (Section II) is amended to include a person or organization as defined above. We shall indemnify the Additional Insured for all covered damages proximately caused by the negligently performed or completed work of the Named Insured. We shall further reimburse the Additional Insured for reasonable attorney's fees and necessary litigation incurred in defending against covered damages proximately caused by the negligently performed or completed work of the Named Insured, except for those attorney's fees and litigation costs paid by another insurer.

Our duty to indemnify and to reimburse attorneys' fees and litigation costs shall not exceed the product arrived by multiplying the total dollar amount of liability for covered damages, or the total dollar amount of attorneys' fees and litigation costs, by that percentage of legal liability attributable to the Named Insured or covered damages as determined by a trier-of-fact in an arbitration or trial.

This endorsement controls and supercedes all other Additional Insured endorsements issued to any additional Insured under this policy unless the Named Insured executes a written contract specifically referring to this endorsement and requiring the Named Insured to provide Additional Insured coverage under different terms. In such circumstance, the written contract shall be controlling as to the limited subject matter of this endorsement.

FORM INDEX

Masco Corporation

MWZY 55525

Effective 6-30-06

0000041



2410 San Ramon Valley Blvd., Suite 230  
San Ramon, CA 94583

**AX**

DATE:	08/15/06	E-MAIL:	susan@pacificmtpart.com
TO:		FROM:	Susan
COMPANY:	COAST BUILDING PRODUCTS	DEPARTMENT:	Accounting
CC:		PHONE:	(925) 855-7200
AX:	209-538-2885	FAX:	(925) 855-1348

**OBJECT:** Insurance coverage for **COAST BUILDING PRODUCTS**

I have reviewed the Certificate of Insurance dated **08/09/06** for the above insured. However, in accordance with the "Insurance Requirements" contained in our Contract, the following **checked items** **require attention:**

- ☐ **Comprehensive General Liability, Bodily Injury and Property Damage:**
  - ☐ Each occurrence/aggregate: **\$1,000,000**
  - ☐ Occurrence Basis (Modified Occurrence or Claims Made Insurance is not acceptable). Include Bodily Injury, Broad Form Property Damage, Completed Products, completed Operations, Premises/Operation, contractual, Owners and Contractors Protective
  - ☐ Underground contractors must provide Explosion/Collapse/Underground (XCU)
- ☐ **Automobile Liability, Bodily Injury, Property Damage:**
  - ☐ Each Occurrence/aggregate: **\$1,000,000**
  - ☐ Any Automobile (includes owned, nonowned and hired)
- ☐ **Workers Compensation:**
  - ☐ Employer's Liability with policy limits of **\$1,000,000**
  - ☐ Waiver of Subrogation
- ☐ **Professional Liability:**
  - ☐ Employer's Liability with policy limits of **\$1,000,000**
- ☒ **Additional Insured Endorsement:**
  - ☒ **Form CG20 10 11 B5** covering:
 

<input checked="" type="checkbox"/> Pacific Mountain Partners, Inc.	<input type="checkbox"/> Fairway Villas at Hiddenbrooke, L.L.C.
<input checked="" type="checkbox"/> Pacific Mountain Partners, L.L.C.	<input type="checkbox"/> PMP at Creekside Meadows, L.L.C.
<input type="checkbox"/> Terrace View at Five Canyons, L.L.C.	<input type="checkbox"/> Countryside at Kerman, L.L.C.
<input checked="" type="checkbox"/> Pacific Mountain at Madera, L.L.C.	<input type="checkbox"/> PMP at Mossdale Landing, L.L.C.
  - ☒ Endorsement to include the following provision:  
*"This insurance shall apply as **primary** insurance as respects to the additional insureds named above and any other insurance available to the additional insureds shall be excess and not contributory with the insurance afforded by this policy."*
- ☒ **Job description to read:**

<input type="checkbox"/> Terrace View at Five Canyons	<input type="checkbox"/> Hidden Grove at Walker Ranch
<input type="checkbox"/> The Villas at Hiddenbrooke	<input type="checkbox"/> Countryside
<input checked="" type="checkbox"/> Coronado/ Montelena	<input type="checkbox"/> Citrus at Mossdale Landing
- ☒ **Certificate Holder:**

<input checked="" type="checkbox"/> Pacific Mountain Partners, Inc.	<input type="checkbox"/> Fairway Villas at Hiddenbrooke, L.L.C.
<input checked="" type="checkbox"/> Pacific Mountain Partners, L.L.C.	<input type="checkbox"/> PMP at Creekside Meadows, L.L.C.
<input type="checkbox"/> Terrace View at Five Canyons, L.L.C.	<input type="checkbox"/> Countryside at Kerman, L.L.C.
<input checked="" type="checkbox"/> Pacific Mountain at Madera, L.L.C.	<input type="checkbox"/> PMP at Mossdale Landing, L.L.C.
- ☒ **Insurance carriers must be "A" rated.**

Please issue a **REVISED** certificate reflecting the above and mail the **ORIGINAL** to my attention immediately. Payments may be held as a result of noncompliance to insurance requirements.

0000042



Please resend this Endorsement  
with corrected names

2410 San Ramon Valley Blvd., Suite 230  
San Ramon, CA 94583

**AX**

ATE:	08/15/06	E-MAIL:	susan@pacificmtpart.com
O:		FROM:	Susan
COMPANY:	COAST BUILDING PRODUCTS	DEPARTMENT:	Accounting
C:	847-953-5390	PHONE:	(925) 855-7200
AX:	209-538-2885	FAX:	(925) 855-1348

SUBJECT: Insurance coverage for **COAST BUILDING PRODUCTS**

I have reviewed the Certificate of Insurance dated **08/09/06** for the above insured. However, in accordance with the "Insurance Requirements" contained in our Contract, the following **checked items** *require attention*:

- ☐ Comprehensive General Liability, Bodily Injury and Property Damage:
  - ☐ Each occurrence/aggregate: \$1,000,000
  - ☐ Occurrence Basis (Modified Occurrence or Claims Made Insurance is not acceptable). Include Bodily Injury, Broad Form Property Damage, Completed Products, completed Operations, Premises/Operation, contractual, Owners and Contractors Protective
  - ☐ Underground contractors must provide Explosion/Collapse/Underground (XCU)
- ☐ Automobile Liability, Bodily Injury, Property Damage:
  - ☐ Each Occurrence/aggregate: \$1,000,000
  - ☐ Any Automobile (includes owned, nonowned and hired)
- ☐ Workers Compensation:
  - ☐ Employer's Liability with policy limits of \$1,000,000
  - ☐ Waiver of Subrogation
- ☐ Professional Liability:
  - ☐ Employer's Liability with policy limits of \$1,000,000
- ☐ Additional Insured Endorsement:
  - ☐ Form CG20 10 11 85 covering:
 

<input type="checkbox"/> Pacific Mountain Partners, Inc.	<input type="checkbox"/> Fairway Villas at Hiddenbrooke, L.L.C.
<input type="checkbox"/> Pacific Mountain Partners, L.L.C.	<input type="checkbox"/> PMP at Creekside Meadows, L.L.C.
<input type="checkbox"/> Terrace View at Five Canyons, L.L.C.	<input type="checkbox"/> Countryside at Kerman, L.L.C.
<input type="checkbox"/> Pacific Mountain at Madera, L.L.C.	<input type="checkbox"/> PMP at Mossdale Landing, L.L.C.
  - ☐ Endorsement to include the following provision:  
*"This insurance shall apply as **primary** insurance as respects to the additional insureds named above and any other insurance available to the additional insureds shall be excess and not contributory with the insurance afforded by this policy."*
- ☒ Job description to read:
 

<input type="checkbox"/> Terrace View at Five Canyons	<input checked="" type="checkbox"/> Hidden Grove at Walker Ranch
<input type="checkbox"/> The Villas at Hiddenbrooke	<input type="checkbox"/> Countryside
<input type="checkbox"/> Coronado/ Montelena	<input type="checkbox"/> Citrus at Mossdale Landing
- ☒ Certificate Holder:
 

<input checked="" type="checkbox"/> Pacific Mountain Partners, Inc.	<input type="checkbox"/> Fairway Villas at Hiddenbrooke, L.L.C.
<input checked="" type="checkbox"/> Pacific Mountain Partners, L.L.C.	<input checked="" type="checkbox"/> PMP at Creekside Meadows, L.L.C.
<input type="checkbox"/> Terrace View at Five Canyons, L.L.C.	<input type="checkbox"/> Countryside at Kerman, L.L.C.
<input type="checkbox"/> Pacific Mountain at Madera, L.L.C.	<input type="checkbox"/> PMP at Mossdale Landing, L.L.C.
- ☐ Insurance carriers must be "A" rated.

Please issue a **REVISED** certificate reflecting the above and mail the **ORIGINAL** to my attention immediately. Payments may be held as a result of noncompliance to insurance requirements.

0000043



REPORT OF INVESTIGATION

MASCO CONTRACTOR SERVICES

Northern California Organization and Activities

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CA Secretary of State

CA Contractor's Licenses

Inspection of Premises

Addendum

Masco Environments For Living Requirements

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REPORT PREPARED MAY 18, 2006 FOR

Bill Lilly  
California Living & Energy  
3015 Dale Court  
Ceres, CA 95307

**0000044**

CA Secretary of State Indices:

The names *Masco Contractor*, *Masco Contractors* or *Builders Service Group* were not discovered in the CA Secretary of State Corporate indices. This search includes Limited Partnerships and/or Limited Liability Companies.

Note that *Masco Contractor Services* is incorporated in Florida under the name, *Builders Service Group*, but indexed as Masco Contractor Services Central, Inc. The name MASCO as part of a company name is utilized in at least twenty-four separate Florida corporations.

It was determined that Masco Contractor Services owns 27 insulation companies in California, as follows:

Bakersfield: Western Insulation, LP  
Ceres: Western Insulation, LP  
Concord: Coast Building Products  
Corona: Paragon Schmid Building Products (2 Locations)  
Fountain Valley: Paragon Schmid Building Products  
Fresno: Western Insulation, LP  
Fresno: Sacramento Building Products  
Hayward: Western Insulation, LP  
Lancaster: Western Insulation, LP  
Marysville: Sacramento Building Products  
Modesto: Sacramento Building Products  
Nipomo: Western Insulation, LP  
Ontario: Western Specialties  
Palm Desert: Paragon Schmid Building Products  
Poway: Schmid Building Products  
Rancho Cucamonga: Paragon Schmid Building Products  
Redding: Sacramento Building Products  
Sacramento: Sacramento Building Products  
Sacramento: Western Insulation, LP  
Salinas: Coast Building Products  
San Diego: Western Insulation, LP  
San Jose: Coast Building Products  
Santa Barbara: Santa Barbara Building Products  
Santa Rosa: Coast Building Products  
Tulare: Sacramento Building Products  
Valencia: Paragon Schmid Building Products

0000045

Those insulation companies located in Northern California, as shown below, were searched in the California Secretary of State corporate indices with the following results:

1. Sacramento Building Products (see #5 below)
2. Western Insulation
3. Coast Building Products (see #6 below)
4. Century Insulation
5. Sacramento Insulation (see #1 above)
6. Coast Insulation (see #3 above)

CA Entity	CA ID #	Address	Agent	Date Filed/	Status
-----------	---------	---------	-------	-------------	--------

Western Insulation, LP	2001-06600006	1029 Technology Park, Glen Allen, VA 23059	CT Corporation System	3/6/01	Active
Coast Insulation Contractors, Inc	C1542005	2339 Beville Rd Daytona Beach, FL 32119	CT Corporation System	9/18/86	Active
Sacramento Insulation Contractors	0455372	2339 Beville Rd Daytona Beach, FL 32119	CT Corporation System	8/1/63	Active

**0000046**

*Note that all insulation contracting companies must be licensed by the CA Board of Contractors.*

Licenses for associated Masco insulation companies found in CA Contractor's License indices:

Co. Name and/or dba	Address on License	CA License No.	Status
Sacramento Insulation Contractors dba Sacramento Building Products	260 Jimmy Ann Drive Daytona Beach, FL 32114 386-304-2222	202026	Current
Sacramento Insulation Contractors dba Central Fireplace	Same as above	847391	Current
Western Insulation, LP*	Same as above	794484	Current
Coast Insulation ** Contractors, Inc. dba Coast Building Products	Same as above	465440	Current
Masco Contractor Services Central Inc dba Century Insulation	2339 Beville Rd Daytona Beach, FL 32119 386- 304-2222	424061	Expired as of 12/31/2001

\* 9 companies utilizing the name Western Insulation are shown on the CA Contractor's License indices. Of these, only one is currently active (shown above). *Additional corporate information on inactive companies available upon request.*

\*\*6 companies utilizing the name Coast Insulation are shown on the CA Contractor's License indices. Of these, only one is currently active (shown above). *Additional information on inactive companies available upon request.*

0000047

Licenses found in CA Contractor's License indices using *Masco Contractor Services* as search term: (4 inactive companies found and NOT shown below. Additional information n inactive companies available)

Co. Name and/or dba	Address on License	License No.	Status
Builder Services Group, Inc. dba Gale Insulation	260 Jimmy Ann Drive Daytona Beach, FL 32114 386-304-2222	709417	Current
Masco Contractor Services Central, Inc. Db Gearhart Building Products	260 Jimmy Ann Drive Daytona Beach, FL 32114 386-304-2222	716847	Current
Builder Services Group, Inc. dba B S I Building Products	2339 Beville Rd Daytona Beach, FL 32119 386- 304-2222	814508	Current

0000048

Masco is active in many other contracting areas, and is actively seeking business to acquire. The following information appears on their web site.

\* \* \* \* \*

*With over twenty years of experience, and over 80 acquisitions, Masco Contractor Services (MCS) has a long history of acquisition success. At MCS, acquisition success means acquiring successful companies, keeping the employees and customers satisfied, and helping the sellers achieve their objectives. When those objectives are met, we know the results will be positive for our company*

*Masco Contractor Services (MCS) is looking to grow through the acquisition of well-managed, profitable companies that add to the company's strategic growth objectives. We look for acquisitions that provide positive opportunities for both the seller and Masco Contractor Services. Specifically, we are looking for the following types of companies that provide installation services to builders and homeowners:*

*Insulation Contractors*

*Guttering Contractors*

*Shelving Contractors*

*Mirror and Shower Enclosure Contractors*

*Cabinet Distribution and Installation Companies*

*Structured Wiring*

*Garage Doors*

*Other: We are always willing to consider other business opportunities with strategic value to the company.*

*Masco Contractor Services is flexible in helping sellers achieve their objectives. As a prevailing philosophy, the employees of the seller are very valuable to MCS and therefore, we work hard to retain the employees of the acquired company, including the sellers (where possible) and managers. MCS is a growing company that provides career opportunities and extensive benefits to all of our employees.*

\* \* \* \* \*

0000049

## INSPECTION OF PREMISES:

### Pulte Homes: *Avondale* and *Toscana* in Mountain House, California

On May 10, 2006, an inspection of *Avondale* and *Toscana*, sub-divisions designated as designed and constructed by Pulte Homes, was initiated. An on-site visit to Mountain House did not reveal any sub-divisions within this Community identified as Avondale or Toscana. Information regarding both *Avondale* and *Toscana* was located during an internet search however, and Pulte Homes currently does have 4 distinct communities in Mountain House. These are entitled *Gable Lane*, *Cambridge Townhomes*, *Terra Bella* and *Amberlea* and are located within the Bethany Neighborhood. The sales offices for these Pulte homes were closed and no additional information could be obtained. The information center at Mountain House was then contacted. The clerk at this center informed us that a meeting was scheduled later this month with the various builders currently working in Mountain House. At that time, dates were to be scheduled for ground breaking of additional subdivisions to be built in the new Altamont Neighborhood, and among them would be the Pulte Developments, *Avondale* and *Toscana*. Future plans for Mountain House include twelve separate neighborhoods or 'villages', although only two neighborhoods, Bethany and Wicklund, are currently developed. A map of the proposed villages was given to us along with other promotional materials.

On May 11, 2006, contact was made with Pulte sales representatives for Gable Lane in Mountain House to discuss any knowledge of building plans for *Avondale* and/or *Toscana*. The representative stated that the unseasonable rains this spring have delayed the building plans and they have been told that construction will probably not start until late this summer, and to expect the models to be ready in early winter. This salesperson was very knowledgeable and proud of the energy efficiency records of Pulte Homes and wanted us to know that they (Pulte) exceed the standard Energy Star requirements and have achieved a Platinum rating, however he had no knowledge of current and/or future insulation companies used and/or any current and/or future 3<sup>rd</sup> party testing contractors.

0000050

## INSPECTION OF PREMISES:

### Pulte Homes: *Legends*, *Gables* and *Groves* at Magnolia Park, in Oakley, California

On May 10, 2006, an inspection of *Legends*, *Gables* and *Groves* at Magnolia Park, subdivisions designated as designed and constructed by Pulte Homes was initiated. Information regarding *Legends*, and *Groves* at Magnolia Park was located during an internet search however, no current mention of *Gables* was found.

Contact was made with the Pulte Construction crew across the street from the Magnolia Park Sign (photo attached). They informed us that both *Gables* and *Groves* were still in the planning stages but that model homes were currently being built for *Legends*. When asked about the Energy Star ratings of Pulte homes and, how, exactly, they were rated and built, the construction foreman said that as far as he knew, Pulte in Brentwood had always used California Living and Energy Consultants for their 3rd party verifier. He added that he had no real knowledge whether any other company was to be used in Oakley, however he had heard that the new development would be using a subsidiary of California Living and Energy Consultants. (Brentwood and Oakley are divided by Nerolly Street and the construction crew trailers were actually in Brentwood. Pulte had subdivisions on the Brentwood side and Magnolia Park is scheduled for the Oakley side.)

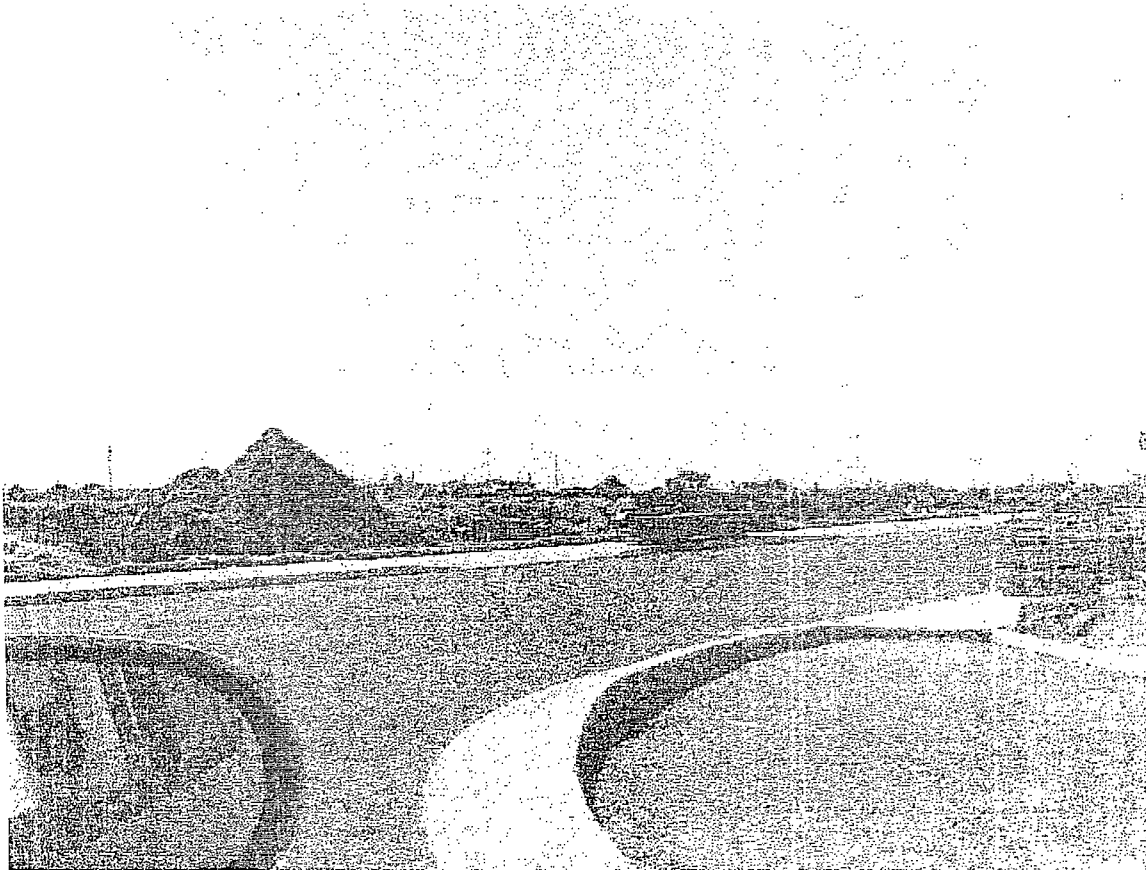


0000051



INSPECTION OF PREMISES:

Pulte Homes: *Legends*, *Gables* and *Groves* at Magnolia Park, in Oakley, California



On May 11, 2006, a visual inspection of what appears to be beginning construction of *Legends* was made. (Photo above) Additionally, contact was made with sales representatives for *Estates* in Brentwood to discuss any knowledge of building plans for *Legends*, *Gables* and *Groves* at Magnolia Park. This salesperson appeared very knowledgeable and proud of the energy efficiency records of Pulte Homes and wanted us to know that they (Pulte) exceed the standard Energy Star requirements and have achieved a Platinum rating for their *Classics* and *Estates at Rose Garden*. He said that he had heard that Pulte was planning a new approach to achieving this rating but, at this time, he didn't know exactly what that approach would be.

0000052

CONSERVATION FOR THE CALIFORNIA LIFESTYLE

**TITLE-24/ENERGY STAR EXPERTS**  
**ENGINEERING**  
**Electrical-Mechanical-Civil**



**CALIFORNIA**  
**LIVING & ENERGY** SM

A Division of William Lilly & Associates, Inc.

TITLE 24 COMPLIANCE-RESIDENTIAL/NON-RESIDENTIAL  
3015 DALE COURT 31800 MISSION TRAIL  
CERES, CA 95307 LAKE ELSINORE CA 92580  
209-538-2875-FX: 209-538-2885 951-471-1443-FX: 471-1857

**INDEPENDENT HERS RATERS**  
**DUCT TESTING PROFESSIONALS**

A.C

TO: BILL LILLY

FROM: DICK SNEDDEN

SUBJECT: MASCO

Number of pages w/ cover sheet: 2

Bill:

Here's a business card Dave Short left with us. It does say they are a Masco Co.

Thanx!

Dick

0000053



**SACRAMENTO  
BUILDING  
PRODUCTS**  
A MASCO COMPANY

1733 Morgan Road #250  
Modesto, CA 95358  
(209) 531-9000  
(209) 558-0834 Fax  
(209) 348-1420 Cell  
e-mail: david.short@masco.com

**David Short**  
HERS, EFL  
Product Manager

Insulation • Fireplaces • Mantels • Rain Gutters  
Garage Doors • Closet Organizers • CA Lic. #202026

0000054



**COAST**  
BUILDING  
PRODUCTS

Division of MASCO CONTRACTOR SERVICES



**LINE OF PRODUCTS**

**BRAND OF PRODUCTS**

**Installed by COAST Building Products**

**INSULATION**

Owens Corning, Certainteed, Icynene,  
Insulation

**FIREPLACE**

Superior, Lennox, Avalon

**GARAGE DOOR  
& OPENER**

Northwest Door, Wayne Dalton, Clopay  
Door  
(Opener-Liftmaster, Wayne Dalton)

**MANTEL**

Hearthco

**CABINETS**

Merillat \*

**PAINT**

BEHR Paint\*

**GUTTER**

Seamless Steel, Aluminum Gutter

**FIRE CAULKING**

Hilti

**EFL - Green**  
Environments for Living

Insulation Inspection Services  
GE Ecomagination Green

**HERS TESTING**  
Home Energy Rating System

Testing and Inspection Services\*

\* Indicates Manufacturers products, additional products includes Millgard  
Windows, Delta Faucets, Kwikset Corp.

0000055

bill

A7  
Supporting e-mail

**From:** "Bill Pennington" <Bpenning@energy.state.ca.us>  
**To:** <blilly@californialivingenergy.com>  
**Cc:** "John Eash" <Jeash@energy.state.ca.us>  
**Sent:** Sunday, October 06, 2002 10:17 AM  
**Subject:** Re: Re:

Independent third party field verification is required for measures in the Standards that require such verification. The MASCO quality control process does not satisfy this requirement.

>>> "bill" <blilly@californialivingenergy.com> 10/05/02 02:28PM >>>

Bill

It has been several months since you e-mailed me regarding your inquiry into Masco's program in response to my concern for what I believe is clearly (and legally) a conflict of interest. You stated that you are waiting for an explanation from Masco. Have you received it yet?

Bill, the market is changing quickly, please let me know as soon as possible what your decision is.

Sincerely

Bill Lilly

California Living & Energy  
(209)538-2879  
(949)250-1165  
(209)538-2885 Fax

----- Original Message -----

**From:** Bill Pennington  
**To:** blilly@californialivingenergy.com ; thamilton@cheers.org  
**Cc:** bholbrook@californialivingenergy.com ; John Eash ; Rob Hudler ; martyn@energysoft.com ; WHughes@smud.org ; billm@soldata.com  
**Sent:** Wednesday, June 26, 2002 3:56 PM  
**Subject:** Re:

Commission staff is awaiting a letter from MASCO explaining their process. When that arrives we will decide how it relates to the conflict of interest rules.

>>> "blilly" <blilly@californialivingenergy.com> 06/26/02 10:30AM >>>

Tom

Thank you, I value your help tremendously. This helps alot.

Sincerely

Bill

California Living & Energy  
3649 Mitchell Rd Suite C  
Ceres, California 95307  
(209) 538-2879  
(209)538-2885 Fax  
[califliving@afo.net](mailto:califliving@afo.net)

----- Original Message -----

**From:** Tom Hamilton  
**To:** blilly ; Bill Pennington  
**Cc:** Bill Mattinson ; bill holbrook ; Martyn Dodd ; Rob Hudler ; Wade Hughes  
**Sent:** Wednesday, June 26, 2002 8:43 AM  
**Subject:** RE:

Bill

Here is my 2cents on the matter. I am not sure what Environments for Living is. I assume it is a program that is sponsored by Masco, not by the CEC, DOE, or EPA. As such Masco can do what they want as long as the program does not involve any HERS required verifications according to the CEC guidelines. If the builder uses any measure to reach T-24 or Energy Star that requires HERS verification (TXV, ducts, etc) then they

0000056

Bill Lilly

---

**From:** Bill Lilly [bill.lilly@califliving.com]  
**Sent:** Wednesday, March 09, 2005 12:18 PM  
**To:** Bill Pennington (E-mail)  
**Cc:** Dave (E-mail); Dick (E-mail); Jeff (E-mail); Larry (E-mail); Terry (E-mail); John Eash (E-mail); Bryan Alcorn (E-mail)  
**Subject:** RE: Masco Process

*Bill*

*Thank you for getting back to me. Your message answered my question that there is no changes regarding the 3rd party HERS rater from being independent from a company program such as Masco's Environments for Living.*

*We believe there is several projects being built by Pulte in Southern California and one in Stockton that have this issue. We still need to do more checking with Brad Townsend and the Providers.*

*Thank You*

*Bill*

*California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax  
bill.lilly@califliving.com  
www.califliving.com*

**Note: New e-mail & Web Site**

-----Original Message-----

**From:** Bill Lilly [mailto:bill.lilly@califliving.com]  
**Sent:** Tuesday, March 08, 2005 9:02 AM  
**To:** Bill Pennington (E-mail)  
**Cc:** Dave (E-mail); Dick (E-mail); Jeff (E-mail); Larry (E-mail); Terry (E-mail); John Eash (E-mail); Bryan Alcorn (E-mail)  
**Subject:** Masco Process

*Bill*

*On October 06,2002, you responded to a question I had regarding Masco 3rd party quality control process as it applies to Energy Star and/or Title-24 independent field verification. You wrote (see attached):*

*"Independent third party field verification is required for measures in the Standards that require such verification. The MASCO quality control process does not satisfy this requirement."*

*Has anything changed?*

*<< File: Masco email from CEC 03-08-05.pdf >> Please respond soon, there are several projects in Northern and Southern California that need to be addressed.*

**0000057**

## Bill Lilly

---

From: Bill Lilly [bill.lilly@califliving.com]  
Sent: Thursday, March 10, 2005 10:23 AM  
To: 'Delilah Levy'  
Cc: 'Bill H (E-mail)'; 'Jeff (E-mail)'; 'Larry (E-mail)'; 'Terry (E-mail)'; 'Dawn Carton'; 'Tom Hamilton';  
Dave (E-mail); Dick (E-mail)  
Subject: RE: Energy Star

Delilah

Thanks for the input, I'll follow up from here. FYI, Jaime Padron works for Sacramento Insulation which is owned by Masco Contractors Service along with Paragon Insulation. They both participate in Masco's Environments for Living Program. They are not allowed to be the 3rd party Rater for their own EFL Program. " The MASCO quality control process does not satisfy this requirement"

Thanks

Bill

California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax  
bill.lilly@califliving.com  
www.califliving.com  
Note: New e-mail & Web Site

-----Original Message-----

From: Delilah Levy [mailto:dlevy@cheers.org]  
Sent: Thursday, March 10, 2005 9:54 AM  
To: bill.lilly@califliving.com  
Cc: 'Bill H (E-mail)'; 'Jeff (E-mail)'; 'Larry (E-mail)'; 'Terry (E-mail)'; Dawn Carton; Tom Hamilton  
Subject: RE: Energy Star

Bill,

Thanks for your e-mail. I am not sure what the issue is. I am not aware of the insulation companies that you mentioned and Jaime Padron does not work for those companies. As far as Jaime's activity, I suggest that you contact him directly.

0000058

Thank you again for your continuing support.

Delilah Levy  
Administrative Assistant  
CHEERS  
9400 Topanga Cyn. Blvd., Suite 220  
Chatsworth, CA 91311  
www.CHEERS.org

-----Original Message-----

From: Bill Lilly [mailto:bill.lilly@califliving.com]  
Sent: Wednesday, March 09, 2005 12:50 PM  
To: Delilah Levy (E-mail)  
Cc: Bill H (E-mail); Jeff (E-mail); Larry (E-mail); Terry (E-mail)  
Subject: Energy Star

Delilah

It was good seeing you at RESNET last week, I hope all is well.  
I am trying to find out if Paragon Insulation and Sacramento Insulation  
(or Jaime Padron) tried to put any houses on the registry for Energy Star  
or

Title-24.

If they did, there may be a conflict of interest.

California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax  
bill.lilly@califliving.com  
www.califliving.com  
Note: New e-mail & Web Site

0000059



Bill Lilly

**From:** Bill Lilly [bill.lilly@califliving.com]  
**Sent:** Wednesday, April 05, 2006 10:42 AM  
**To:** Tav Commins  
**Cc:** Larry; Jeff; Dick; Bill H  
**Subject:** RE: 3rd party violation

*Pulte  
confirmation*

Tav

Thank you (and Bill) for following up on this. This is very important.  
 Last time I checked they are using Tom Hamilton at CHEERS as their  
 Provider:  
 Thanks again

**Bill Lilly**  
**President**  
**California Living & Energy**  
**3015 Dale Ct.**  
**Ceres, California 95307**  
**(209) 538-2879 x11**  
**(209) 538-2885 Fax**  
[bill.lilly@califliving.com](mailto:bill.lilly@califliving.com)  
[www.califliving.com](http://www.califliving.com)

**Note: New e-mail & Web Site**

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-----Original Message-----

**From:** Tav Commins [mailto:Tcommins@energy.state.ca.us]  
**Sent:** Monday, April 03, 2006 9:29 AM  
**To:** bill.lilly@califliving.com  
**Subject:** Re: 3rd party violation

Bill Pennington asked me to look in to this.

Do you know who the HERS provider is for Coast Building Products?

Tav

>>> "Bill Lilly" <bill.lilly@califliving.com> 03/31/06 11:38 AM >>>  
 Bill

In October of 2002 you wrote me stating that "... The MASCO quality control process does not satisfy this requirement." With your response I mistakenly thought that this situation would not come up again. Well, it has.

Another part of the 3rd party agreement state "...HERS raters cannot

0000060

4/5/2006

have any financial interest in the Builder's or contractor's business...". This is exactly what is happening in Pulte's Altura project in San Jose and Toscana and Avondale @ Mountain House. Coast Building Products (an insulation company) has the independent 3rd party agreement for Altura. Coast is installing and repairing their products on this project therefore are not independent. They have a financial interest in this project and can not be classified as independent 3rd party. Suppose (this is make believe and will never happen) the Builder said unless you pass this house you may not get the next sub-contract for the next phase.

As you can see in this e-mail I told Pulte I will contact the CEC regarding this violation and I left the items concerning this for your review.

I am going to send this to you by snail mail to illustrate the importance of this matter. Several years ago MASCO offered to buy my firm and in my opinion to control the market, it was no then and it is still no.

See 2nd issue and 3rd issue in my e-mail to Robert Dauth

Thanks

Bill

Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax  
bill.lilly@califliving.com  
[www.califliving.com](http://www.califliving.com)

-----Original Message-----

From: Bill Lilly [<mailto:bill.lilly@califliving.com>]

Sent: Friday, March 10, 2006 12:44 PM

To: Robert Dauth; Deb Heden; Gary Oertel

Cc: Rich Giometti; Jeff; Dick; Anita; Larry Stubbart; Bill Holbrook

Subject: RE: Altura bid & 3rd party

Robert

I thought the issue regarding 3rd party testing was resolved when Bill Pennington at the CEC ruled against Masco's EFL system several years. This is a little different in form then the previous ruling therefore I will need get confirmation from the CEC. Thanks for the understanding  
Bill

0000061

-----Original Message-----

From: Bill Lilly [<mailto:bill.lilly@califliving.com>]

Sent: Wednesday, March 08, 2006 11:11 AM

To: Robert Dauth

Cc: Rich Giometti; Jeff; Dick; Anita; Larry Stubbart; Bill Holbrook

4/5/2006

Subject: Altura bid & 3rd party

Robert

2nd issue

There is a independent 3rd party requirement in the State of California. We have gone over this several times with the CEC and sub-contractors such as insulators can not perform independent 3rd party testing on a subdivision that they have a financial interest in. Under the State statue the sub-contractor can not install or repair anything on a subdivision where they are the 3rd party inspectors. This law has been reviewed and up held by the State.

3rd issue/Liability

The next issue is suppose Pulte Homes is sued by a Home Owner (we know this will never happen) who complains about some sort of energy problem. It will help you the Builder to state that you hired somebody who does not install or repair any energy related product such as HVAC, insulation, fireplaces etc. to inspect their house. You need to have somebody who is really independent and who can testify in court for you, if needed. We carry Error and Omission Insurance they don't.

4th issue

Oh yea, if price is an issue then talk to us.

Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax  
bill.lilly@califliving.com  
[www.califliving.com](http://www.califliving.com)

-----Original Message-----

From: Robert Dauth [<mailto:Robert.Dauth@Pulte.com>]  
Sent: Wednesday, March 08, 2006 7:06 AM  
To: Bill Holbrook  
Cc: Larry Stubbart  
Subject: RE: Altura

Yes, it was the HERS bid. Coast Building Products was awarded the HERS inspections for both Altura and Devon Square. The decision was made largely due to the fact that that CL&E can no longer get primary wording in their insurance certificates. The other factor was price, their bid to perform the inspection was more competitive. Hope this helps Bill, let me know if there are any additional questions or concerns. Thanks.

0000062

Robert

4/5/2006

↑  
Bill Lilly

From: Bill Lilly (bill.lilly@califliving.com)  
Sent: Thursday, April 13, 2006 10:23 AM  
To: Tav Commins, bill.lilly@califliving.com  
Cc: Rich Giometti; Bill H; Dick; Jeff; Larry  
Subject: 3rd party violation

Tav

I little confused or maybe I'm not the sharpest tool in the shed. I am not clear what Tom is saying. As you can see with the attached e-mail on our the previous correspondence, Pulte Homes/Northern California already gave Coast Building Products the contract to do the 3rd party testing on two subdivisions. Coast Building Products persented themselves as the "independent" 3rd party rater. I have read the sections you sent me many times ← plus the corresponding Building and proccession code, Contractor License law and hundreds of sub-contracts sent to us by General Builders as to what is a Legal entity. These Builders legally become a single financial entity with the Sub- Contractor. And by contractual definition the sub-contractor who is installing or repairing a product such as insulation on a subdivision can not be an independent 3rd party rater on that subdivision testing or inspecting anything. There is a mutual financial interest. "By law HERS raters must be independent entities from the Builder or subcontractor installer..." Besides, when the law states "independent" what does that mean? From what is written in the section you sent me plus all other applicable laws it means you should not be getting money from the back door or should I say the appearance of the back door.

I have heard many times from the CEC that raters are another inspector ← similar to a city Building inspector. I'm sure there are some jurisdictions who would frown on one of there inspectors owning a tile company who has the contract to install tile on a subdivision and as a part of his job they were supposed to inspect that subdivision up to the frame.

Tav, we must not only support the "intent of the CEC regulations" but actually obey them. And if we have to error lets at least error on the side of true independence. I am not a lawyer and maybe I just do not get it. Maybe I need to consult somebody more wiser then I am and if I am wrong I will drop it.

three-party contracts can and have worked but it is still based on the CEC concept of "rater independence".

Thanks  
Bill

they  
own  
wilgard  
insulation  
fire place  
plumbing

Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct  
Ceres, California 95307  
(209) 538-2879 x11  
(209) 538-2885 Fax

4/13/2006

0000063

[bill.lilly@califiving.com](mailto:bill.lilly@califiving.com)

[www.califiving.com](http://www.califiving.com)

## **Note: New e-mail & Web Site**

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-----Original Message-----

From: Tay Commins [mailto:Tcommins@energy.state.ca.us]

Sent: Wednesday, April 12, 2006 8:22 AM

To: bill.lilly@califiving.com

Subject: RE: 3rd party violation

Below is Tom's response. I have included the information on third party contract from page 2-16 of the res manual.

Coast Building products does have raters that are certified by CHEERS. Concerning the projects you mention nothing is happening with them at this point. Pulite has been releasing the bid specs for the projects and Pulite is reviewing the submitted bids for their projects. Coast Building products is fully aware of the regulatory requirements and supports the intent of the CEC Regulations. Due to their internal quality assurance Coast Building products is pursuing all appropriate approaches including, but not limited to the 'three-party agreement' to ensure their client (Pulite) realizes they are receiving a valuable service, not just a service that is an expense.

### **Example 2-7**

#### **Question**

I heard that there are conflict-of-interest requirements that HERS raters must abide by when doing field verification and diagnostic testing. What are these requirements?

#### **Answer**

HERS raters are expected to be objective, independent, third parties when they are fulfilling their duties as field verifiers and diagnostic testers. In this role they are serving as special inspectors for local building departments. By law HERS raters must be independent entities from the builder or subcontractor installer of the energy efficiency features being tested and verified. They can have no financial interest in the installation of the improvements. HERS raters can not be employees of the builder or subcontractor whose work they are verifying. Also, HERS raters cannot have any financial interest in the builder's or contractor's business or advocate or recommend the use of any product or service that they are verifying. Section 106.3.5 of the CBC prohibits a special inspector from being employed (by contract or other means) by the contractor who performed the work that is being inspected.

The Energy Commission expects HERS raters to enter into a contract with the builder (not with sub-contractors) to provide independent, third-party diagnostic testing and field verification, and the procedures adopted by the Energy Commission calls for direct reporting of results to the builder, the HERS provider, and the building official. Although the Energy Commission does not recommend it, a "three-party contract" with the builder is possible, provided that the contract delineates both the independent responsibilities of the HERS rater and the responsibilities of a sub-contractor to take corrective action in response to deficiencies that are found by the HERS rater. Such a "three-party contract" may also establish a role for a sub-contractor to serve as contract administrator for the contract, including scheduling the HERS rater, invoicing, and Compliance and Enforcement – Field Verification and/or Diagnostic Testing Page 2-17

2005 Residential Compliance Manual March 2005

payment provided the contract ensures that monies paid by the builder to the HERS rater can be traced through audit. It is critical that such a "three-party contract" preserves rater independence in carrying out the responsibilities specified in Energy Commission-adopted field verification procedures. Even though such a "three-party contract" is not on its face in violation

**0000064**

of the requirements of the Energy Commission, the closer the working relationship between the HERS rater and the sub-contractor whose work is being inspected, the greater the potential for compromising the independence of the HERS rater.

CHEERS and CalCERTS have been approved by the Energy Commission to serve as HERS providers to certify and oversee HERS raters throughout the state. These providers are required to provide ongoing monitoring of the propriety and accuracy of HERS raters in the performance of their duties and to respond to complaints about HERS rater performance. In cases where there may be real or perceived compromising of HERS rater independence, they are responsible for providing increased scrutiny of the HERS rater, and taking action to ensure objective, accurate reporting of diagnostic testing and field verification results, in compliance with Energy Commission adopted procedures.

Building officials have authority to require HERS raters to demonstrate competence, to the satisfaction of the building official. Building officials should place extra scrutiny on situations where there may be either real or perceived compromising of the independence of the HERS rater, and exercise their authority to disallow a particular HERS rater from being used in their jurisdiction or disallow HERS rater practices that the building official believes will result in compromising of HERS rater independence.

>>> "Bill Lilly" <bill.lilly@califliving.com> 04/05/06 10:42 AM >>>

Tav

Thank you (and Bill) for following up on this. This is very important. Last time I checked they are using Tom Hamilton at CHEERS as their Provider.

Thanks again

From: Tav Commins [mailto:Tcommins@energy.state.ca.us]

Sent: Monday, April 03, 2006 9:29 AM

To: bill.lilly@califliving.com

Subject: Re: 3rd party violation

Bill Pennington asked me to look in to this.

Do you know who the HERS provider is for Coast Building Products?

Tav

>>> "Bill Lilly" <bill.lilly@califliving.com> 03/31/06 11:38 AM >>>

Bill

In October of 2002 you wrote me stating that "... The MASCO quality control process does not satisfy this requirement." With your response I mistakenly thought that this situation would not come up again. Well, it has.

Another part of the 3rd party agreement state "...HERS raters cannot have any financial interest in the Builder's or contractor's business. ". This is exactly what is happening in Pulte's Altura project in San Jose and Toscana and Avondale @ Mountain House. Coast Building Products (an insulation company) has the independent 3rd party agreement for Altura. Coast is installing and repairing their products on this project therefore are not independent. They have a financial interest in this project and can not be classified as independent 3rd party. Suppose (this is make believe and will never happen) the Builder said unless you pass this house you

0000065

may not get the next sub-contract for the next phase.

As you can see in this e-mail I told Pulte I will contact the CEC regarding this violation and I left the items concerning this for your review.

I am going to send this to you by snail mail to illustrate the importance of this matter. Several years ago MASCO offered to buy my firm and in my opinion to control the market, it was no then and it is still no.

See 2nd issue and 3rd issue in my e-mail to Robert Dauth

Thanks

Bill

Bill Lilly

President

California Living & Energy

3015 Dale Ct.

Ceres, California 95307

(209) 538-2879 x11

(209) 538-2885 Fax

bill.lilly@califliving.com

[www.califliving.com](http://www.califliving.com)

-----Original Message-----

From: Bill Lilly [<mailto:bill.lilly@califliving.com>]

Sent: Friday, March 10, 2006 12:44 PM

To: Robert Dauth; Deb Heden; Gary Oertel

Cc: Rich Giometti; Jeff; Dick; Anita; Larry Stubbett; Bill Holbrook

Subject: RE: Altura bid & 3rd party

Robert

I thought the issue regarding 3rd party testing was resolved when Bill Pennington at the CEC ruled against Masco's EFL system several years. This is a little different in form then the previous ruling therefore I will need get confirmation from the CEC. Thanks for the understanding Bill

-----Original Message-----

From: Bill Lilly [<mailto:bill.lilly@califliving.com>]

Sent: Wednesday, March 08, 2006 11:11 AM

To: Robert Dauth

Cc: Rich Giometti; Jeff; Dick; Anita; Larry Stubbett; Bill Holbrook

Subject: Altura bid & 3rd party

Robert

2nd issue

There is a independent 3rd party requirement in the State of California. We have gone over this several times with the CEC and sub-contractors such as insulators can not perform independent 3rd party

4-11-2006

0000066

testing on a subdivision that they have a financial interest in. Under the State statute the sub-contractor can not install or repair anything on a subdivision where they are the 3rd party inspectors. This law has been reviewed and upheld by the State.

#### 3rd issue/Liability

The next issue is suppose Pulte Homes is sued by a Home Owner (we know this will never happen) who complains about some sort of energy problem. It will help you the Builder to state that you hired somebody who does not install or repair any energy related product such as HVAC, insulation, fireplaces etc. to inspect their house. You need to have somebody who is really independent and who can testify in court for you, if needed. We carry Error and Omission Insurance they don't.

#### 4th issue

Oh yea, if price is an issue then talk to us.

Bill Lilly  
President  
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(209) 538-2885 Fax  
bill.lilly@califliving.com  
[www.califliving.com](http://www.califliving.com)

#### -----Original Message-----

From: Robert Dauth [mailto:Robert.Dauth@Pulte.com]  
Sent: Wednesday, March 08, 2006 7:06 AM  
To: Bill Holbrook  
Cc: Larry Stubbart  
Subject: RE: Altura

Yes, it was the HERS bid. Coast Building Products was awarded the HERS inspections for both Altura and Devon Square. The decision was made largely due to the fact that that CL&E can no longer get primary wording in their insurance certificates. The other factor was price, their bid to perform the inspection was more competitive. Hope this helps Bill, let me know if there are any additional questions or concerns. Thanks.

Robert

0000067



Bill Lilly

---

From: Bill Lilly [bill.lilly@califliving.com]  
Sent: Monday, June 05, 2006 11:36 AM  
To: Tav Commins  
Cc: Rich Giometti, Anita, Bill H; Dick; Jeff; Larry  
Subject: RE: 3rd party conversation

Tav

It has been almost two months since I have e-mailed you regarding this issue and I have subsequently talked to Bill Pennington at the CABEC conference. I have not heard anything from the CEC!

On my side, the Private Investigator and some of our people have found some possible violations (PI has more research to do). It seems a company called Energy Sense is the 3rd party rater on the Pulte Projects in question. Masco owns Energy Sense per David Short of Sacramento Building Products. Sacramento Building Products is owned by Masco. The Three party contract for the Pulte Projects is under Coast Insulation, a Masco company, which is using another company called Energy Sense- go figure. Same Mama and Papa but they say they are not related. I hope the investigation is incorrect and there is no malfeasance. The more we look the more questions that are raised. Such as, where is every body on this?

Please respond.  
Thanks  
Bill

PS Masco is already on the inter net using Energy Sense in Texas, it seems logical they would use it in California. David Short, who used to work for us had lunch with one of our Managers and was trying to find out how far our investigation has gotten. mmm

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bill.lilly@califliving.com  
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be the views of California Living. Except as required by law, California Living does not represent, warrant or guarantee that the integrity of this communication has been maintained nor that the communication is free of errors, virus, interception or interference.

-----Original Message-----

From: Bill Lilly [mailto:bill.lilly@califliving.com]

Sent: Monday, April 17, 2006 9:30 AM

To: Tav Commins

Cc: Rich Glometti; Anita; Bill H; Christine Weeks; Dick; Jeff; Larry

Subject: 3rd party conversation

Tav

Thanks for speaking with me this morning. Per our conversation, you will review the issues we discussed with Bill Pennington regarding Coast Building Products violation (what I believe) of the third party independent requirements as stated in the residential manual plus the independence of any three party contract they may of entered in to. Then you will contact the required people on how they are monitoring this situation. I personally come to believe there may be a possible ethical issue with the three party contract as it is now constituted in the Standards. Or why would the CEC state " ...Energy Commission does not recommended it...". I plan on challenging the "three party contract" in the future.

Thanks

Bill Lilly

President

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www.califliving.com

0000069

e-mail Subdiv

Questions Regarding the Investigation of Masco Contractor Services:

1. Note\* *Masco Contractor Services* is incorporated in Florida under the name, *Builders Service Group*, but indexed as *Masco Contractor Services Central, Inc.* The name *MASCO* as part of a company name is utilized in at least 24 separate Florida corporations. Do you want us to Investigate all of the Masco related entities or just a few?

2. The name *Masco Contractor*, *Masco Contractors* or *Builders Service Group* were not discovered in the CA Secretary of State Corporate indices. This search includes Limited Partnerships and/or Limited Liability Companies

3. Are we interested in insulation companies only? <sup>yes</sup> *Masco* is active in many other contracting areas, see next pages). Would you like the Investigation to include named personnel of CA companies? Any Masco officer names to be searched?

4. Do you want copies of any FBNs, Articles of Incorporations, Statements of Officers? Would you want the companies searched in Civil Court in each of the respective counties?

5. County searches requested: Sacramento, Santa Clara, Alameda, Stanislaus, San Joaquin. Any additional counties? San Francisco, Marin, Sonoma, Solano, Contra Costa?

Named companies in email as follows: Note that all insulation contracting companies must be licensed by the CA Board of Contractors.

1. Sacramento Building Products (see #5 below)
2. Western Insulation
3. Coast Building Products (see #6 below)
4. Century Insulation
5. Sacramento Insulation (see #1 above)
6. Coast Insulation (see #3 above)

Auto - 110 Magnolia Park in Oak  
2) ~~Legends~~ - ✓  
3) ~~Tables~~ ✓  
4) ~~Draws~~ ✓  
5) ~~Over paint~~ ✓  
6) ~~Latrop~~  
7) ~~Provid~~

CA Entity	CA ID #	Address	Agent	Date Filed/	Status
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Western Insulation, LP	2001-06600006	1029 Technology Park, Glen Allen, VA 23059	CT Corporation System	3/6/01	Active
Coast Insulation Contractors, Inc	C1542005	2339 Beville Rd Daytona Beach, FL 32119	CT Corporation System	9/18/86	Active

0000070

Bill Lilly

From: Tav Commins [Tcommins@energy.state.ca.us]  
 Sent: Friday, September 08, 2006 1:39 PM  
 To: bill.lilly@califiving.com  
 Subject: MASCO

I talked to the MASCO rep several weeks ago and also send him an e-mail with a list of all the requirements for conflict of interest.

I told them to put together a letter explaining to us how their new company does not violate the conflict of interest requirements.

I have not had a response to date.

Tav

916 653-1598

10-16-06 9:30 AM

He called Masco 2 or 3 times  
 & no response from masco.

He thinks he received a letter from  
 Masco, Masco says. So, Tav will  
 contact them again for a response  
 if they get no response by 10-20-06  
 He will say that other Rate companies  
 can say masco is not following  
 CEC guidelines. I will follow up  
 on 10-23-06

0000071

## **HERS Regulations**

### **' 1673. Requirements for Providers.**

#### **(i) Conflict of Interest.**

- (1) Providers shall be independent entities from raters who provide field verification and diagnostic testing.
- (2) Providers and raters shall be independent entities from the builder and from the subcontractor installer of energy efficiency improvements field verified or diagnostically tested.

### **' 1671. Definitions.**

**Financial Interest** means an ownership interest, debt agreement, or employer/employee relationship. Financial interest does not include ownership of less than 5% of the outstanding equity securities of a publicly traded corporation.

**Independent Entity** means having no financial interest in, and not advocating or recommending the use of any product or service as a means of gaining increased business with, firms or persons specified in Section 1673(i).

NOTE: The definitions of "independent entity" and "financial interest," together with Section 1673(i), prohibit conflicts of interest between providers and raters, or between providers/raters and builders/subcontractors.

## **Residential Compliance Manual**

The Energy Commission expects HERS raters to enter into a contract with the builder (not with sub-contractors) to provide independent, third-party diagnostic testing and field verification, and the procedures adopted by the Energy Commission calls for direct reporting of results to the builder, the HERS provider, and the building official. Although the Energy Commission does not recommend it, a "three-party contract" with the builder is possible, provided that the contract delineates both the independent responsibilities of the HERS rater and the responsibilities of a sub-contractor to take corrective action in response to deficiencies that are found by the HERS rater. Such a "three-party contract" may also establish a role for a sub-contractor to serve as payment provided the contract ensures that monies paid by the builder to the HERS rater can be traced through audit. It is critical that such a "three-party contract" preserves rater independence in carrying out the responsibilities specified in Energy Commission-adopted field verification procedures. Even though such a "three-party contract" is not on its face in violation of the requirements of the Energy Commission, the closer the working relationship between the HERS rater and the sub-contractor whose work is being inspected, the greater the potential for compromising the independence of the HERS rater.

#### Question

I heard that there are conflict-of-interest requirements that HERS raters must abide by when doing field verification and diagnostic testing. What are these requirements?

#### Answer

HERS raters are expected to be objective, independent, third parties when they are fulfilling their duties as field verifiers and diagnostic testers. In this role they are serving as special inspectors for local building departments. By law HERS raters must be independent entities from the builder or subcontractor installer of the energy efficiency features being tested and verified. They can have no financial interest in the installation of the improvements. HERS raters can not be employees of the builder or subcontractor whose work they are verifying. Also, HERS raters cannot have any financial interest in the builder's or contractor's business or advocate or recommend the use of any product or service that they are verifying. Section 106.3.5 of the CBC prohibits a special inspector from being employed (by contract or other means) by the contractor who performed the work that is being inspected.

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*2005 Residential Compliance Manual March 2005*

payment provided the contract ensures that monies paid by the builder to the HERS rater can be traced through audit. It is critical that such a "three-party contract" preserves rater independence in carrying out the responsibilities specified in Energy Commission-adopted field verification procedures. Even though such a "three-party contract" is not on its face in violation of the requirements of the Energy Commission, the closer the working relationship between the HERS rater and the sub-contractor whose work is being inspected, the greater the potential for compromising the independence of the HERS rater.

CHEERS and CalCERTS have been approved by the Energy Commission to serve as HERS providers to certify and oversee HERS raters throughout the state. These providers are required to provide ongoing monitoring of the propriety and accuracy of HERS raters in the performance of their duties and to respond to complaints about HERS rater performance. In cases where there may be real or perceived compromising of HERS rater independence, they are responsible for providing increased scrutiny of the HERS rater, and taking action to ensure objective, accurate reporting of diagnostic testing and field verification results, in compliance with Energy Commission adopted procedures.

Building officials have authority to require HERS raters to demonstrate competence, to the satisfaction of the building official. Building officials should place extra scrutiny on situations where there may be either real or perceived compromising of the independence of the HERS rater, and exercise their authority to disallow a particular HERS rater from being used in their jurisdiction or disallow HERS rater practices that the building official believes will result in compromising of HERS rater independence.

**Independent Entity** means having no financial interest in, and not advocating or recommending the use of any product or service as a means of gaining increased business with, firms or persons specified in Section 1673(i) of the California Home Energy Rating System Program regulations (California Code of Regulations, Title 20, Division 2, Chapter 4, Article 8). **Financial Interest** means an ownership interest, debt agreement, or employer/employee relationship. Financial interest does not include ownership of less than 5% of the outstanding equity securities of a publicly traded corporation.

NOTE: The definitions of "independent entity" and "financial interest," together with Section 1673(i), prohibit conflicts of interest between providers and raters, or between providers/raters and builders/subcontractors

0000074

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**Bill Lilly**

**From:** Bill Lilly [bill.lilly@califliving.com]  
**Sent:** Monday, October 16, 2006 3:40 PM  
**To:** Bill Pennington; doug@dougbeaman.com; bill.lilly@califliving.com; Tav Commins  
**Cc:** Rich Giometti; Larry; Jeff; Dick; Bill H  
**Subject:** RE: MASCO Conflict of Interest

**Tav**

I really appreciate you getting back to me. Let me see, I'm having a little trouble understanding... MASCO's (possessive) subs can verify work completed by another MASCO sub... mmmm I think I get it, there goes the concept of "independent" HERS rater.

Tav, sorry for the poor effort of frustrated satire.

**Thanks**  
**Bill**

-----Original Message-----

**From:** Tav Commins [mailto:Tcommins@energy.state.ca.us]  
**Sent:** Monday, October 16, 2006 1:41 PM  
**To:** bill.lilly@califliving.com; doug@dougbeaman.com; Bill Pennington  
**Subject:** MASCO Conflict of Interest

I Just talked to Dave Bell, National Sales Manager with MASCO. He will be sending me the letter this week form MASCO explaining how MASCO's subs can verify work completed by another MASCO sub.

**Tav**

12-8-06 Tuesday  
I left message!

0000075



Bill Lilly &lt;blillycle@gmail.c

**Masco**

2 messages

Tav Commins &lt;Tcommins@energy.state.ca.us&gt;

Fri, Jan 5, 2007 at 2:34

To: bill.lilly@califliving.com

We are working on the reply letter to Masco regarding one Masco sub company providing HERS verification for another Masco sub company.

Have you seen or do you have any advertising literature from Masco regarding this process?

Tav

Bill Lilly &lt;bill.lilly@califliving.com&gt;

Sat, Jan 6, 2007 at 3:04

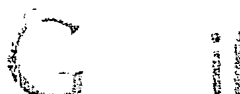
Reply-To: bill.lilly@califliving.com

To: Tav Commins &lt;Tcommins@energy.state.ca.us&gt;

Tav  
I will follow up on this Monday. I will get you something as soon as possible. Give me until this Wednesday to get back to you  
Thanks  
Bill

[www.califliving.com](http://www.califliving.com)

0000076



Bill Lilly <blillycle@gmail.com>

## Re: MASCO Conflict of Interest

3 messages

Tav Commins <Tcommins@energy.state.ca.us>

Tue, Jan 9, 2007 at 1:25

To: William Staack <Wstaack@energy.state.ca.us>

Cc: bill.lilly@califiving.com

Sorry I did not get the attached letter to you sooner. I did not think I could send it to you. I received the OK from Bill P. to send it out.

The letter from MASCO is attached. It lists the subsidiaries. I believe that CHEERS will be doing the HERS verifications.

Tav

>>> William Staack 01/09/07 10:28 AM >>>

Could I get the name Corporate names used by:

(1)Masco Inc.,

(2)Masco Contractor Services and its two separate corporate subsidiaries that : (a) installs energy efficiency products and (b) does the HERS.

A search online of the California Secretary of State provides no useful information. More detail information is available for a fee--but I want to contact the Secretary of State legal office to see if that fee can be waived for a sister agency doing an enforcement investigation.

Bill Staack, Esq, P.E.  
Senior Attorney  
Legal Office  
California Energy Commission  
(916) 654-3873

>>> Bill Pennington 01/08/07 6:44 PM >>>

ok Thanks.

>>> William Staack 01/05/07 3:14 PM >>>

I have not had time to search on the Secretary of State page from MASCO and it subs due to litigation regulations and DOE petition. I should be able to get to it next week.

Bill Staack, Esq, P.E.  
Senior Attorney  
Legal Office  
California Energy Commission  
(916) 654-3873

0000077

>>> Bill Pennington 01/05/07 1:53 PM >>>

I wanted to ask how we're doing on the followup to the 12/21 meeting??

>>> Tav Commins 12/11/06 9:58 AM >>>


I received a request to move the date. The mtg has been rescheduled to the 21st.

Last month November 8th we had a meeting regarding MASCO sub companies doing HERS verification of other MASCO sub companies. We came up with several questions we wanted to MASCO.

In the last month with holidays, vacation, travel and a death in my family I have only been at work 6 days. My notes are not complete enough to remember the questions we had developed.

I would like to get back together and see if we can decide what the questions should be.

Tav

 **LEGAL- CEC response - final.DOC**  
41K

**Bill Lilly <bill.lilly@califliving.com>**  
Reply-To: bill.lilly@califliving.com  
To: Tav Commins <Tcommins@energy.state.ca.us>

Tue, Jan 9, 2007 at 7:23 PM

Tav

Thank you for letting me read Masco's letter. I did not received your response to Masco. After reading Masco's letter, I thought mmmm, maybe I do not understand what a "subsidiary" is. So I went to Websters dictionary for look see and thankfully the definition has not changed since I was in school "company controlled by another". Since they are not a non profit I would suspect that they have a financial interest (Section 1671) in a subsidiary they own. Sometimes these things just come to me. Tav, in short I believe it is just alot of smoke and mirrors. But I must admit it is well written.

Thanks  
Bill

PS I will try to get the information you requested.

[www.califliving.com](http://www.califliving.com)

 **LEGAL- CEC response - final.DOC**  
41K

**Bill Lilly <bill.lilly@califliving.com>**  
Reply-To: bill.lilly@califliving.com  
To: Mike Bachand <mike@calcerts.com>

Tue, Jan 9, 2007 at 7:25 PM

cc: Dick <dick.snedden@califliving.com>, Randy Chaffey <randy.chaffey@califliving.com>, Larry <larry.stubbert@califliving.com>

Mike  
FYI

**0000078**

----- Forwarded message -----  
From: Bill Lilly <bill.lilly@califliving.com>  
Date: Jan 9, 2007 7:23 PM

Subject: Re: MASCO Conflict of Interest  
To: Tav Commins <[Tcommins@energy.state.ca.us](mailto:Tcommins@energy.state.ca.us)>



**LEGAL- CEC response - final.DOC**  
41K

**0000079**

Bill Lilly &lt;blillycle@gmail.com&gt;

**MASCO**

Bill Lilly &lt;bill.lilly@califliving.com&gt;

Fri, Jan 19, 2007 at 12:24

Reply-To: bill.lilly@califliving.com

To: Tav Commins &lt;Tcommins@energy.state.ca.us&gt;

Cc: Larry &lt;larry.stubbert@califliving.com&gt;, Dick &lt;dick.snedden@califliving.com&gt;, Randy Chaffey &lt;randy.chaffey@califliving.com&gt;

Tav

Sorry it has taken so long to get this info to you. We just got this Wednesday. As you can see from the communication between John Kindorf of Pulte and Evonne Revitt of Pg&E, Masco clearly has the HERS contract for Wyndam and Stratford Communities. Regardless of the subsidiary name they use, MCS, Energy Sense etc it still is addressed as Masco, it is all interrelated. David Short and Rich Dunn still use the Masco e-mail address.

I am also e-mailing what we compiled the calcs with for Wyndam. I suggest you call Evonne or Linda Turkatte at PG&E for more detailed information on other subdivisions Masco is providing the HERS rating. there is financial connection between all of their legal entities as well as a real world connection.

Please keep me updated.

Bill

P.S: I would like to talk to you about why we believe in 100% 3rd party testing and what an easy sell it has been with the Builder

[www.califliving.com](http://www.califliving.com)

**2 attachments**

 **Wyndam @ Mountain House EFL-Energy Star 05-22-06.doc**  
69K

 **PulteMasco.pdf**  
23K

**0000080**

**FW: Pulte projects**

Larry Stubbart <larry.stubbart@califliving.com>  
To: "Bill Lilly (E-mail)" <bill.lilly@califliving.com>

Fri, Jan 19, 2007 at 7:13

BL:

Here is the information we need for Tav.

LS

-----Original Message-----

From: John Kindorf [mailto:John.Kindorf@Pulte.com]  
Sent: Wednesday, January 17, 2007 2:58 PM  
To: Rich.Dunn@mascoocs.com; david.short@mascoocs.com;  
larry.stubbart@califliving.com  
Cc: Revitt, Evonne; Zack Jones  
Subject: FW: Pulte projects

Attached are Request for Payment letters for projects where Masco (CHEERS) performs HERS Rating and CLE performed the Title 24/Energy Star calculations just in case you never got them from us. In addition to the communities above, Masco has HERS Rating contracts at Wyndam and Stratford. Note that PG&E has no record of these 2 newer communities.

I expect that CLE and Masco can work together to ensure the rebates are available to Pulte for all lots at Wyndam and Stratford and that the PG&E application is has been filed.

John Kindorf  
Purchasing Manager SFD  
Pulte Homes  
6210 Stoneridge Mall Road, 5th Floor  
Pleasanton, CA 94588.  
Ph: (925) 249-3246  
Fx: (925) 249-4374  
Cell: (925) 383-5455

-----Original Message-----

From: Revitt, Evonne [mailto:ERH2@pge.com]  
Sent: Wednesday, January 17, 2007 11:17 AM  
To: John Kindorf  
Cc: Turkatte, Linda  
Subject: FW: Pulte projects

Hi John,

Attached are the acceptance letters and Request For Payment Forms for 6 of the 7 active projects that I have for you. I am still waiting for the Acceptance letter and Request For Payment form for the Magnolia Park Legends project and will get that to you as soon as it is ready.

Evonne

Evonne Revitt

0000081

PG&E  
1955 41st Avenue, Suite B-2  
Capitola, CA 95010  
ph: (916) 213-4032  
FAX: (831) 479-5806

-----Original Message-----

From: Revitt, Evonne  
Sent: Wednesday, January 17, 2007 10:42 AM  
To: 'John Kindorf'  
Subject: Pulte projects

John,

Below are the applications that I show we have for you. Were the other projects submitted under different names. Attached is a PDF file listing all projects that we have for you.

The only active projects in our database from your list below are:

Terra Bella @ Mountain House  
Amberlea @ Mountain House  
Avondale  
Toscana  
Magnolia Park legends, Groves, and Gables

I will send you the acceptance letters for these.

Evonne

-----Original Message-----

From: John Kindorf [mailto:[John.Kindorf@Pulte.com](mailto:John.Kindorf@Pulte.com)]  
Sent: Friday, January 12, 2007 3:07 PM  
To: Revitt, Evonne  
Subject: RE: Magnolia Park Legends by Pulte

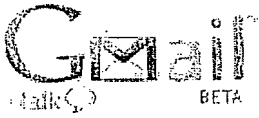
Gable Lane - no application under that name  
Terra Bella - Terra Bella @ Mountain House - active  
Amberlea - Amberlea @ Mountain House - active  
Avondale - active  
Toscana - active  
Gallery - no application under that name  
Classics - no application under that name  
Arbors - no application under that name  
Estates - no current application under that name, all expired or paid  
Legends - Magnolia Park Legends - active  
Groves - Magnolia Park Groves - active  
Gables - Magnolia Park Gables - active  
Wisteria - expired  
Wyndam - no application under that name  
Stratford - no application under that name

John Kindorf  
Purchasing Manager SFD  
Pulte Homes  
6210 Stoneridge Mall Road, 5th Floor  
Pleasanton, CA 94588  
Ph: (925) 249-3246  
Fx: (925) 249-4374  
Cell: (925) 383-5455

0000082

-----Original Message-----

From: Revitt, Evonne [mailto:[ERH2@pge.com](mailto:ERH2@pge.com)]  
Sent: Friday, January 12, 2007 11:31 AM  
To: John Kindorf  
Subject: Magnolia Park Legends by Pulte



Bill Lilly &lt;blillycle@gmail.com&gt;

## Update on MASCO Investigation

Bill Lilly &lt;bill.lilly@califliving.com&gt;

Wed, May 30, 2007 at 5:12 PM

Reply-To: bill.lilly@califliving.com

Bcc: clockhart@delvallehomes.net, clockheart@delvallehomes.net, dnazaren@ryland.com, ehamilton@dunmorehomes.com, emartin@delvallehomes.net, gthacher@khov.com, jjorgensen@griffinindustries.com, jrleathers@centexhomes.com, Chad A Steve <castevens@drhorton.com>, Toby Panfil <tpanfil@drhorton.com>, Abram John <AbramJ@matthewshomes.com>, Ada O'Donnell <aodonnell@stanpac.com>, Amar A Singh <AASingh@drhorton.com>, "Anishiura@Barryswensonbuilder. Com" <anishiura@barryswensonbuilder.com>, Arachelle Laranang <ALaranang@drhorton.com>, "Aroper@Centexhomes. Com" <aroper@centexhomes.com>, Bill Walls <BWalls@mcmillin.com>, "Blinder@Centexhomes. Com" <blinder@centexhomes.com>, "BLKoller@drhorton. com" <BLKoller@drhorton.com>, Bo Crane <bcrane@stanpac.com>, Bob Dinsmore <rdinsmore@centexhomes.com>, Bob Dolliver <dolliver@andersonhomes.com>, Bob Frasier <bfrasier@centexhomes.com>, Bob Raymus <bob@raymushomes.com>, "Bob@Denovahomes. Com" <bob@denovahomes.com>, Brad Durga <Brad@denovahomes.com>, Brandon Hill <Brandon.Hill@pulte.com>, Brett Deschamps <bdeschamps@centexhomes.com>, Bru hewitt <bhewitt@drhorton.com>, Carrol Stubbs <cstubbs@brookfieldhomes.com>, Chris Glenn <CGlenn@khhcorp.com>, Chris Jones <cjones@matthewshomes.com>, Chris Silver <csilvers@ponderosahomes.com>, Chuck DeGarmo <cdegarmo@griffinholdings.net>, "Craig Walker @ Shea Homes" <craig.walker@sheahomes.com>, Dale Blanchard <DBlanchard@drhorton.com>, Dale Lovelace <dlovelace@scmhomes.com>, Dan Biggs <danb@raymus.com>, Dan Mettler <dmettler@anderson-homes.com>, "Danielle R. Capicotto" <drapicotto@mdch.com>, Dave Jagoe <djagoe@ljarch.com>, Dave Kay <dave.kay@sheahomes.com>, David Lee <dlee@ryland.com>, Deb Heden <Deb.Heden@pulte.com>, Debra Wright <dw@woodleyarch.com>, "Don Hofer @ Shea Homes" <don.hofer@sheahomes.com>, Doug Eikenbary <Doug.Eikenbary@lyonhomes.com>, Doug Livenspargar <Doug.Livenspargar@pulte.com>, Doug Nazarenus <Doug.Nazarenus@ryland.com>, Drew Layland <dlayland@matthewshomes.com>, "DRHorton - Samuel Lee (E-mail)" <SLee@drhorton.com>, Edward Gaudreau <egaudreau@greenbriarhomes.com>, Eric Brent <Eric.Brent@pulte.com>, "Eric Kelle @ Shea Homes" <eric.keller@sheahomes.com>, "Fposey@Ryland. Com" <fposey@ryland.com>, "Garret Becker @ Becker & Hamilton Homes" <bhhomes@aol.com>, Gary Stone <gsstone5316@aol.com>, "Gcherrada@Centexhomes. Com" <gcherrada@centexhomes.com>, "Gdmiller@Centexhomes. Com" <gdmiller@centexhomes.com>, "Glen Martin @ Standard Pacific" <gmartin@stanpac.com>, Greg marcon <gmarcon@centexhomes.com>, Gregory Bakel <gregory.bakel@sheahomes.com>, Gus Ferriols <gferriols@sigprop.com>, "Iabaptista@Centexhomes. Com" <iabaptista@centexhomes.com>, "James Brenda @ JK Homes" <james@jkbhomes.com>, Janet Hughes <jhughes@h-homes.com>, Jay Williamson <jwilliamson@khhcorp.com>, "Jeff. Douthit@lennar. com" <Jeff.Douthit@lennar.com>, "Jeff. Frankel@Lyonhomes. Com" <jeff.frankel@lyonhomes.com>, "Jesse Co @ Lincoln Property Co." <couch@legacypartners.com>, Jill Marie Johnson <JillMJohnson@drhorton.com>, "Jjones@Matthewshomes. Com" <jjones@matthewshomes.com>, Joe Miller <Joe.Miller@meritagehomes.com>, John Dougherty <john.dougherty@meritagehomes.com>, John ford <jford@passporthomes.com>, John Kindorf <John.Kindorf@pulte.com>, John Mohr <jmohr@shapecal.com>, John Severino <JSeverino@stanpac.com>, "John Vosbein @ Florsheim Homes" <jvosbein@florsheimhomes.com>, Joseph Hanna <jhanna@stanpac.com>, Julie Collier <jcollier@newamerica homes.com>, Kare lhavens <klhavens@drhorton.com>, Karin Lucken <kyluck@drhorton.com>, Ken Breckenridge <Ken.Breckenridge@ryland.com>, Kevin Allen <Kevin.Allen@pulte.com>, Matt Innes <minnes@scmhomes.com>, "Melanie. Grello@lennar. com" <Melanie.Grello@lennar.com>, Michael J Schafer <mjschafer@missionhomes.net>, "Michael K. Peterson @ Pinn Bros. Construction" <martinp@pinnbros.com>, "Michelle. Donathen@pulte. com" <Michelle.Donathen@pulte.com>, Mike Bachand <mike@calcerts.com>, "Mike Caresco @ Caresco Development" <carescohomes@aol.com>, Mike Demboski <Mike.Demboski@pulte.com>, "Mike Perry (BAD)" <Mike.Perry@pulte.com>, "Mike Tregoning @ Shapell Industries of Nor Cal" <mtregoning@sincal.com>, Mitch Flanagan <mflanagan@griffinindustries.com>, "Mjschafer@Adobefinancial. Net" <mjschafer@adobefinancial.net>, Monaca Smith <MSmith2@stanpac.com>, Mort Newman <mnewman@greenbriarhomes.com>, "Mlwitkowski@Griffinindustries. Com" <mwlitkowski@griffinindustries.com>, Nancy L Springer <NLSpringer@drhorton.com>, Natl Tuttle <ntuttle@centexhomes.com>, Nick Guantone <nguantone@fcbhomes.com>, Nicole Bures <nzbures@griffinindustries.com>, Nicole M Johnson <NMJohnson@drhorton.com>, Pam Nelson <pnelson@braddockandlogan.com>, "Pervin@Suncal. Com" <pervin@suncal.com>, Peter Lezak <plezak@drhorton.com>, "Peter. Beucke@Lennar. com" <Peter.Beucke@lennar.com>, Rac Mendoza <raquelm@pinnbros.com>, "Rbrown@Stantec. Com" <rbrown@stantec.com>, Richard Gruber <richardg@raymus.com>, "Rick Lafferty @ Lafferty Homes" <rgarchar@laffertyhomes.com>, "Rlarsen@Khov. Com" <rlarsen@khov.com>, Robert Dauth <Robert.Dauth@pulte.com>, "Robert Sprague @ Mandarich Development" <roberts@mandrichdevelopments.com>, Rocky Richardson <Rocky.Richardson@pulte.com>, "Rwalker@Ponderosahomes. Com" <rwalker@ponderosahomes.com>, Ryan Hov <ryanh@garymcdonaldhomes.com>, Sam Aboujudom <SAboujudom@shhomes.com>, Sandy Jennings <sandy.jennings@pulte.com>, Sandy Pritchard <Sandy.Pritchard@pulte.com>, Scott W Johnson <SWJohnson@drhorton.com>, Scott Wallace <stwallace@caltel.com>, Sean Quackenbush <seanq@wathen-castanos.com>, "Seana. Annastas@lennar. com" <Seana.Annastas@lennar.com>, Serena Martinez <serena@wathen-castanos.com>, Shannon Ward <snward@suncal.com>, St A Ellis <SAEllis@drhorton.com>, Sheri Catlett <sheri@jkbhomes.com>, "Sjohnson@Dunmorehomes. Com" <sjohnson@dunmorehomes.com>, Ssmith <ssmith@denovahomes.com>, Stan Chestlock <scheslock@centexhomes.com>, St Knickerbocker <sknickerbocker@matthewshomes.com>, Steph Peeks <steph@denovahomes.com>, "Steve Hay @ Frontiers"

0000083



Bill Lilly <blillycle@gmail.com>

## MASCO Letter


Tav Commins <Tcommins@energy.state.ca.us>  
To: Bill Lilly <bill.lilly@califliving.com>

Tue, May 29, 2007 at 8:46 AM

Attached is the letter that went out May 15th.

You will see that on page the bottom of page 2 "Without supplementary documentation provided to the contrary, it appears that a violation of the conflict of interest provision under the HERS regulations could exist between EnergySense and various entities under the Masco Corporation structure because of the following presumptions:"

Bill P. sent an e-mail this morning to William Staack the attorney who wrote the letter asking when we should follow up.

 MASCO Conflict of Interest-MAY15rev.doc  
83K

0000084

Bill Lilly <blillycle@gmail.co

## MASCO Results —

Bill Lilly <bill.lilly@califliving.com>

Tue, Jun 19, 2007 at 4:26

Reply-To: bill.lilly@califliving.com

To: Tav Commins <tcommmins@energy.state.ca.us>, "Pennington, Bill" <Bpenning@energy.state.ca.us>

Tav

I hold all is well and you are enjoying your vacation. If it is not your vacation well... continue working.

Since our last e-mail I have been wondering what were the results of CEC attorneys and their meeting with MASCO on June 13. What amazes me is that everybody I talk to see a financial conflict even their two competitors (their is not many left) in California. What does CHEERS think?

Thanks

Bill

—  
President  
California Living & Energy  
3015 Dale Ct.  
Ceres, California 95307

(209) 538-2879 x11

Per Tav.  
They are having a  
conference call Wed  
8-8-07. Have asked me not  
to Broadcast what was being  
done.

0000085



Bill Lilly &lt;bill.lilly@califliving.com&gt;

## Masco

Tav Commins <Tcommins@energy.state.ca.us>  
 To: Bill Lilly <bill.lilly@califliving.com>

Mon, Nov 19, 2007 at 10:46 AM

I set up several mtg's with the group to ask MASCO several questions. Bill kept having to cancel. After receiving this msg on the 31st I sent an e-mail to my attorney suggesting that we just send MASCO an e-mail with the question.

I just went down today and talked to the attorney and he said he will send the e-mail requesting the information. It is only one question that should be easy for them to answer.

As long as my attorney sends the info we should have the info soon and it will be easy to make a conclusion.

Tav

>>> "Bill Lilly" <bill.lilly@califliving.com> 10/31/2007 10:43 AM >>>

[Quoted text hidden]

to Tav  
 12-20-07 I left message about status of  
 Masco & what I heard from  
 Regen Baudis

2-4-08 4:10pm

I left message on status of Masco problems.  
 I received correspondence from Dave N regarding  
 masco violations.

0000086



Bill Lilly &lt;bill.lilly@califliving.com&gt;

## Masco violations

Bill Lilly &lt;bill.lilly@califliving.com&gt;

Thu, Feb 14, 2008 at 10:02 PM

To: Tav Commins &lt;tcommins@energy.state.ca.us&gt;

Cc: Bill Mattinson <billm@soldata.com>, Bill Dakin <bldakin@davisenergy.com>, bretkillings@yahoo.com, Bert Sanchez <BSanchez@turlock.ca.us>, airapparent@comcast.net, Allen Amaro <amaroconstruction@yahoo.com>, donn@greenhomesavvy.com, donnull@ducttesters.com, DBlanke@semprautilities.com, Gordon Beall <foservices@comcast.net>, golferjohn@starstream.net, geodedb@idiom.com, Gary Wollin <gary@dougbeaman.com>, gmahoney@cityofdavis.org, hvacconsultant@msn.com, hoffmaninsulation@yahoo.com, hersrater@sbcglobal.net, info@greatvalley.org, jamader@rhainc.com, jennifer@hersolar.com, Linda Murphy <murphy@h-m-g.com>, Linda Murphy <lsmt24@yahoo.com>, lsmt24@comcast.net, mikbet@sti.net, mhosier@ci.manteca.ca.us, mike@calcerts.com, mwood@cityofdavis.org, miguel@whainc.com, mart@energysoft.com, Pepper <pepper@davisenergy.com>, paul@northbayenergy.com, passe.jonathan@epa.gov, Robert Scott <rscott@cheers.org>, Dave Hegarty <davehegarty@ducttesters.com>, Randy Chaffey <Randy.Chaffey@califliving.com>, Lexine Lilly <lexine.lilly@califliving.com>, Larry <larry.stubbert@califliving.com>, Jeff <jeff.chapman@califliving.com>, Mark Gallant <mark@title-24.com>, "G. LeBron" <galo@wredco.net>

Tav

Are you Serious? That question has been answered a long time ago. Per yours and Bill Pennington's request the CEC lawyers have been involved in this for over 18 months. This investigation has been going since March 10, 2005 per our conversations at that time. Dave Bell VP of MASCO even wrote you a letter stating "Energy Sense, like MSG is a direct subsidiary of MASCO...". Tom Hamilton (this has been going on for a long time) of CHEERS asked Doug Beamon & Associates to investigate this. Doug completed his investigation turned it over to you with no major discrepancy with what I told you. also, I personally hired a Private Investigator from San Francisco to verify this. One of his conclusions was "It was determined that Masco Contractor Services owns 27 insulation companies in California, as follows: He listed all of them. (talk about a monopoly). You sent a Letter to MASCO titled "Possible Conflict...". You actually received e-mail from one of the largest Builders in the Country confirming the relationship. What about the Masco insurance cert?

On a separate but equally egregious issue was MASCO's EFL Program which Bill Pennington wrote in 2002 "Independent third party field verification is required for measures in the Standards that require such verification. The MASCO quality control process does not satisfy this requirement." I response is "da"!

there are other items we have reviewed in the past several years that illustrate their violation of the Standards.

Now, what does it take to call a violation, a violation? What more needs to be done for the California Energy Commission to act? This has dragged on for to long

sincerely  
Bill Lilly

**From:** Tav Commins [mailto:Tcommins@energy.state.ca.us]  
**Sent:** Wednesday, February 13, 2008 11:21 AM  
**To:** DAVE HEGARTY  
**Subject:** Re: FW: Masco

0000087

recognize our request. Of course this could have been a cautious reaction to priority information, but I was convinced that he had no knowledge of the forms. It is a daily task and expense for our Rater companies to get the CF6R forms for each house under a Masco insulation contract. We struggle everyday to get them to respond to CEC rules on CF6R forms for each house to provide sample groupings and "tested" houses. It is Masco employees' knowledge that no one comes behind them to insure proper insulation installation and to fill out the CF6R for each house, just interview any onsite employee, they will let you know that never happens. Does Masco possess any documentation of failure or correction, and doesn't CEC rules and interpretations require it as a "perceived compromise" candidate.

At the very least, the quotes below are appropriate and provide a clear intent, especially under the Providers and their responsibility to "increased scrutiny" of such raters. Thanks for listening. Could CEC respond to this situation in a clear and timely manner? We appreciate your attention to this matter.

HERS raters are expected to be objective, independent, third parties when they are fulfilling

their duties as field verifiers and diagnostic testers. In this role they are serving as special

inspectors for local building departments. By law HERS raters must be independent entities

from the builder or subcontractor installer of the energy efficiency features being tested and

verified. They can have no financial interest in the installation of the improvements. HERS

raters cannot be employees of the builder or subcontractor whose work they are verifying.

Also, HERS raters cannot have any financial interest in the builder's or contractor's business or

advocate or recommend the use of any product or service that they are verifying. Section

106.3.5 of the CBC prohibits a special inspector from being employed (by contract or other

means) by the contractor who performed the work that is being inspected

CHEERS and CalCERTS have been approved by the Energy Commission to serve as HERS

providers to certify and oversee HERS raters throughout the state. These providers are

**0000088**



Bill Lilly &lt;bill.lilly@califliving.com&gt;

## Masco

DAVE HEGARTY <davehegarty@ducttesters.com>  
 To: Tav Commins <Tcommins@energy.state.ca.us>

Mon, Feb 4, 2008 at 3:17 PM

Tav: sorry this took so long to get out. I am writing you to remind you that Masco's **Energy Sense** is doing all of D R Horton work for Rating and that, in Manteca, they (MASCO) are rating their own work as in Sacramento Building Products installation of insulation and D R Horton's QII measures. They (Masco) are doing the rating for Western Insulation and Coast as well. All Companies owned and operated by MASCO and profits relating to these Companies flow into the MASCO conglomeration. I am in possession of evidence in the form of movies and still pictures of the work being done at D R Horton, which shows the quality of the work being done and does not meet the QII measures standards from my perspective. It is with the greatest of concern and frustration that I call your attention to this matter. It is our greatest desire to call attention to this travesty and our understanding of CEC rules and guidelines and that MASCO is being allowed to continue to RATE for themselves and the clients that they can and do sway with energy measures to capture the insulation work of those clients. Why else would Masco spend the time, energy and money to develop a portion of their business that brings the least profit to their entire business model. Their interests reside in the reduction of cost to their client (and themselves), if they are used as the rater as opposed to legitimate raters with no secondary interest, and the protection Masco gets from SELF RATING in connection with sampling. Has Masco documented any time when they have asked the installation side to REWORK or has not passed the QII measures? The pictures I have, prove at least one thing, and that is that QII is not being taken seriously by Masco when it is their own installation (when one of their own companies is doing the install). We asked the Builder to see the CF6R forms and the CF4R forms for the installation, he did not understand or recognize our request. Of course this could have been a cautious reaction to priority information, but I was convinced that he had no knowledge of the forms. It is a daily task and expense for our Rater companies to get the CF6R forms for each house under a Masco insulation contract. We struggle everyday to get them to respond to CEC rules on CF6R forms for each house to provide sample groupings and "tested" houses. It is Masco employees' knowledge that no one comes behind them to insure proper insulation installation and to fill out the CF6R for each house, just interview any onsite employee, they will let you know that never happens. Does Masco possess any documentation of failure or correction, and doesn't CEC rules and interpretations require it as a "perceived compromise" candidate.

At the very least, the quotes below are appropriate and provide a clear intent, especially under the Providers and their responsibility to "increased scrutiny" of such raters. Thanks for listening. Could CEC respond to this situation in a clear and timely manner? We appreciate your attention to this matter.

HERS raters are expected to be objective, independent, third parties when they are fulfilling their duties as field verifiers and diagnostic testers. In this role they are serving as special inspectors for local building departments. By law HERS raters must be independent entities from the builder or subcontractor installer of the energy efficiency features being tested and verified. They can have no financial interest in the installation of the improvements. HERS

0000089

raters cannot be employees of the builder or subcontractor whose work they are verifying.

Also, HERS raters cannot have any financial interest in the builder's or contractor's business or advocate or recommend the use of any product or service that they are verifying. Section 106.3.5 of the CBC prohibits a special inspector from being employed (by contract or other means) by the contractor who performed the work that is being inspected

CHEERS and CalCERTS have been approved by the Energy Commission to serve as HERS providers to certify and oversee HERS raters throughout the state. These providers are required to provide ongoing monitoring of the propriety and accuracy of HERS raters in the performance of their duties and to respond to complaints about HERS rater performance. In cases where there may be real or perceived compromising of HERS rater independence, they are responsible for providing increased scrutiny of the HERS rater, and taking action to ensure objective, accurate reporting of diagnostic testing and field verification results, in compliance with Energy Commission adopted procedures.

Building

Dave Hegarty

**DuctTesters**  
by Dave Hegarty



0000090



Bill Lilly <bill.lilly@califliving.com>

---

## Masco

Bill Lilly <bill.lilly@califliving.com>

Tue, Feb 5, 2008 at 10:29 AM

To: Tav Commins <Tcommins@energy.state.ca.us>

Cc: DAVE HEGARTY <davehegarty@ducttesters.com>, Mark Alatorre <Malatorr@energy.state.ca.us>, William Staack <Wstaack@energy.state.ca.us>

Tav & Mark

Thanks for your concern. I can not stress enough how important I believe Masco's violation of the Standards are.

I talked to Hoffman Insulation yesterday and they said that MASCO is using a point system rebate for services provided on subdivisions which include installing insulation and inspecting HQI. Hoffman will try to get a copy of Masco's program. I will forward it to you as soon as I get it.

Bill

[Quoted text hidden]

Bill Lilly  
President  
California Living & Energy  
3015 Dale Ct  
Ceres, Ca. 95307  
209-538-2879 x11

0000091



## Dennis Beck - Complaints and Requests for Investigation

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**From:** Dennis Beck  
**To:** bill.lilly@califliving.com  
**Date:** 3/18/2008 11:56 AM  
**Subject:** Complaints and Requests for Investigation  
**CC:** Bill Pennington; davehegarty@ducttesters.com; Tav Commins; William Staack  
**Attachments:** Title 20, Sections 1230 - 1237.pdf

---

Mr. Lilly -

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Office of the Chief Counsel  
Attn: Dennis Beck, Senior Staff Counsel  
1516 Ninth Street, MS-14  
Sacramento, CA 95816

Please ensure that the complaint or request for investigation includes all the information and complies with all the requirements set forth in Section 1231. If it does not, it may be dismissed as insufficient.

Thank you.

**Dennis L. Beck, Jr.**  
Senior Staff Counsel  
California Energy Commission  
1516 Ninth Street, MS-14  
Sacramento, CA 95814  
(916) 654-3974  
[Dbeck@energy.state.ca.us](mailto:Dbeck@energy.state.ca.us)

0000092

**Dennis Beck - Re: Complaints and Requests for Investigation**

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**From:** "Bill Lilly" <bill.lilly@califliving.com>  
**To:** "Dennis Beck" <Dbeck@energy.state.ca.us>  
**Date:** 3/18/2008 2:24 PM  
**Subject:** Re: Complaints and Requests for Investigation  
**CC:** <davehegarty@ducttesters.com>, "Bill Pennington" <Bpenning@energy.state.ca.us>, "Tav Commins" <Tcommins@energy.state.ca.us>, "William Staack" <Wstaack@energy.state.ca.us>, "G. LeBron" <galo@wredco.net>, "Scott Johnson" <an1mph@ca.rr.com>

---

Dennis

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Per our discussion last week Bill Staack stated his letter to Dave Bell President of Energy Sense is a public document therefore it can be decimated to our Builders. Has this changed?

Sincerely  
 Bill

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**0000093**

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209-538-2879 x11

**0000094**

**Dennis Beck - Re: Complaints and Requests for Investigation**

**From:** Dennis Beck  
**To:** Bill Lilly  
**Date:** 3/18/2008 3:02 PM  
**Subject:** Re: Complaints and Requests for Investigation  
**CC:** Bill Pennington; davehegarty@ducttesters.com; G. LeBron; Scott Johnson; Tav Commins; William Staack

That has not changed.

>>> "Bill Lilly" <bill.lilly@califiving.com> 3/18/2008 2:23 PM >>>  
 Dennis

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**0000095**

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0000096

**Dennis Beck - RE: Complaints and Requests for Investigation**

---

**From:** "DAVE HEGARTY" <davehegarty@ducttesters.com>  
**To:** "Dennis Beck" <Dbeck@energy.state.ca.us>  
**Date:** 3/18/2008 5:45 PM  
**Subject:** RE: Complaints and Requests for Investigation

---

Dennis Beck: Hi, my name is Dave Hegarty, and I am a Rater. I wanted to understand the CEC position better than I do now, because of the length of time this issue has gone undetermined. In the articles you sent Bill Lilly, indicate that at anytime, a member or staff could have filed a complaint or request for Investigation. Is that correct? The reason for asking is that, it would seem (and I say this with all due respect) an entity or person could knowingly violate these regulations and continue to do so (operate), even with the Staff/Commissions' knowledge, and profit from that violation, grow their business level and service to extensive levels, all in violation of that regulation, but without a formal complaint from anyone, would not be held to the standard of that regulation? In other words, as Masco grows their level of Business in this industry and their influence, they can continue to operate and profit at the risk of violation and jeopardy to the State's policies and energy issues? Please understand that these questions are not to inflame, but to understand so that all Raters have equal authority under the Title 20 jurisdiction. I personally, have a difficult time with understanding why Bill Lilly was not told that he must record a complaint or request for investigation, even to the point of our last meeting at the CEC on Wednesday, March 12, 2008. It was not brought to the meeting any formal complaint forms or procedures to complaint or request for investigation, even though the question was asked. It was in fact asked at the meeting, and the response was that we could now consider that this meeting was the formal complaint (of course that was after the question was asked).

We the Raters, (organization of CHEERS, CALCERTS and CBPCA Raters) are very much concerned for the issues that Bill Staack posed to the MASCO Corporations David Bell, in his letter dated May 15, 2008, for which they, CEC and Bill Staack said has gone unanswered.

I would like to offer also, the information obtained and sent to TAV on the wording used in the CEC regs explaining the determination of conflict, as "real or perceived" as conflict. So when you read this part of the explanation, even if real weren't credible, certainly in this instant case, PRECEIVED is credible. "There cannot be a real or perceived conflict of interest". Tav has that email dated February 7, 2008. Our concern is that anyone can operate in violation and Staff or Commissioners cannot respond without formal complaints or requests for investigation. As we just saw in a case in which I initiated to the CEC, Sawyers Heating and Air was operating in this manner and it did not take Staff any time at all to ferret out the truth and make determinations swiftly and decisively. So in wondering about these issues and seeing two entirely different responses from CEC and Staff, we need to understand how and what the parameters and procedures are. Thanks for your response in advance.  
 Dave

---

**From:** Dennis Beck [mailto:Dbeck@energy.state.ca.us]  
**Sent:** Tuesday, March 18, 2008 11:56 AM  
**To:** bill.lilly@califliving.com  
**Cc:** davehegarty@ducttesters.com; Bill Pennington; Tav Commings; William Staack

0000097

**Subject:** Complaints and Requests for Investigation

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Sacramento, CA 95814  
(916) 654-3974  
[Dbeck@energy.state.ca.us](mailto:Dbeck@energy.state.ca.us)

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Checked by AVG.

Version: 7.5.519 / Virus Database: 269.21.7/1332 - Release Date: 3/17/2008 10:48 AM

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Checked by AVG.

Version: 7.5.519 / Virus Database: 269.21.7/1332 - Release Date: 3/17/2008 10:48 AM

**0000098**

## Dennis Beck - Re: Complaints and Requests for Investigation

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**From:** "Bill Lilly" <bill.lilly@califliving.com>  
**To:** "Dennis Beck" <Dbeck@energy.state.ca.us>  
**Date:** 3/18/2008 6:12 PM  
**Subject:** Re: Complaints and Requests for Investigation  
**CC:** "Scott Johnson" <an1mph@ca.rr.com>, <davehegarty@ducttesters.com>, "Bill Pennington" <Bpenning@energy.state.ca.us>, "Tav Commings" <Tcommings@energy.state.ca.us>, "William Staack" <Wstaack@energy.state.ca.us>, "G. LeBron" <galo@wredco.net>

---

Dennis

MASCO has not violated any law or statute that I or my firm has devised. They have done nothing legally against any rater firm in the State of California. What they have done is violated the Standards you and the CEC has devised and passed yet you will do nothing. We have to file a complaint for ignoring your Standards. What is wrong with this picture?

Does this mean I can ignore all testing protocol and you will do nothing?

Bill

On 3/18/08, **Dennis Beck** <Dbeck@energy.state.ca.us> wrote:

That has not changed.

>>> "Bill Lilly" <bill.lilly@califliving.com> 3/18/2008 2:23 PM >>>

Dennis

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Sincerely  
 Bill

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**0000099**



Sacramento, CA 95816

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0000100

Dennis Beck - May 15, 2007 Letter Masco

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**From:** "DAVE HEGARTY" <davehegarty@ducttesters.com>  
**To:** <wstaack@energy.state.ca.us>  
**Date:** 3/18/2008 5:06 PM  
**Subject:** May 15, 2007 Letter Masco  
**CC:** "Bill Lilly" <bill.lilly@califliving.com>

---

Bill: can you email me a copy of your letter to Masco on the May 15, 2007 date, about possible conflict of interest. I would really appreciate it. My clients want to see the issue and decide for themselves, and they are asking for a copy of the letter. Masco under their Energy Sense office is telling the client that there is no issue and that they have satisfied the State's concerns and also have a letter from the State concurring that Masco under Energy Sense is eligible to HERS rate and verify any and all work. They however have not, and accordingly, will not be able to produce that letter, at least until it is decided by CEC. Thanks Dave

**DuctTesters**  
by Dave Hegarty



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Version: 7.5.519 / Virus Database: 269.21.7/1332 - Release Date: 3/17/2008 10:48 AM

**0000101**

## Dennis Beck - Re: Complaints and Requests for Investigation

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**From:** Dennis Beck  
**To:** Bill Lilly  
**Date:** 3/19/2008 9:38 AM  
**Subject:** Re: Complaints and Requests for Investigation  
**CC:** Bill Pennington; Tav Commings; William Staack

---

Mr. Lilly -

Filing a complaint or request for investigation is the formal process by which violations of the CEC's regulations are dealt with. You are the one who brought the allegations of MASCO's violations to the CEC, and you have certain knowledge about the facts that the CEC does not (for example, you were the one who saw the MASCO paycheck given to the Energy Sense employee, not anyone at the CEC). As such, it appears that you are the person best situated to initiate a formal complaint or request for investigation.

One of the concerns you highlighted during our meeting last week was the length of time that has passed since you first approached the CEC with your allegations about MASCO. By filing a complaint or request for investigation, all parties and the CEC will be required to comply with specific time frames that are set forth in the regulations, and thus the matter cannot be ignored or "put on the back burner" by the parties, including MASCO, or the CEC. This will give you a measure of predictability about the process and the time it will take to come to a resolution.

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[Dbeck@energy.state.ca.us](mailto:Dbeck@energy.state.ca.us)

>>> "Bill Lilly" <[bill.lilly@califliving.com](mailto:bill.lilly@califliving.com)> 3/18/2008 6:11 PM >>>  
 Dennis

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Does this mean I can ignore all testing protocol and you will do nothing?  
 Bill

On 3/18/08, **Dennis Beck** <[Dbeck@energy.state.ca.us](mailto:Dbeck@energy.state.ca.us)> wrote:

That has not changed.

>>> "Bill Lilly" <[bill.lilly@califliving.com](mailto:bill.lilly@califliving.com)> 3/18/2008 2:23 PM >>>

Dennis

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**0000102**

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Sincerely  
Bill

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**0000103**

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**0000104**

**Dennis Beck - Re: Complaints and Requests for Investigation**

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**From:** "Bill Lilly" <bill.lilly@califliving.com>  
**To:** "Dennis Beck" <Dbeck@energy.state.ca.us>  
**Date:** 3/19/2008 9:47 AM  
**Subject:** Re: Complaints and Requests for Investigation  
**CC:** "Bill Pennington" <Bpenning@energy.state.ca.us>, "Tav Commins" <Tcommins@energy.state.ca.us>, "William Staack" <Wstaack@energy.state.ca.us>

---

Sir

Thank you for your response. I understand a lot more about the process and will proceed accordingly. My ignorance exceeds my drive.

Sincerely

Bill Lilly

On 3/19/08, **Dennis Beck** <Dbeck@energy.state.ca.us> wrote:

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**0000107**



**From:** Dennis Beck  
**To:** davehegarty@ducttesters.com  
**Date:** 3/19/2008 11:10 AM  
**Subject:** RE: Complaints and Requests for Investigation  
**Attachments:** Re: Complaints and Requests for Investigation

Mr. Hegarty -

Attached is an e-mail exchange between Bill Lilly and myself from this morning, which I hope will answer the questions and concerns you pose in your e-mail.

**Dennis L. Beck, Jr.**  
Senior Staff Counsel  
California Energy Commission  
1516 Ninth Street, MS-14  
Sacramento, CA 95814  
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>>> "DAVE HEGARTY" <[davehegarty@ducttesters.com](mailto:davehegarty@ducttesters.com)> 3/18/2008 5:43 PM >>>

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**Cc:** [davehegarty@ducttesters.com](mailto:davehegarty@ducttesters.com); Bill Pennington; Tav Commings; William Staack  
**Subject:** Complaints and Requests for Investigation

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0000108

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**Dennis L. Beck, Jr.**

Senior Staff Counsel

California Energy Commission

1516 Ninth Street, MS-14

Sacramento, CA 95814

(916) 654-3974

[Dbeck@energy.state.ca.us](mailto:Dbeck@energy.state.ca.us)

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0000109

**From:** "Bill Lilly" <bill.lilly@califliving.com>  
**To:** "Dennis Beck" <Dbeck@energy.state.ca.us>  
**CC:** "Bill Pennington" <Bpenning@energy.state.ca.us>, "Tav Commins" <Tcommins...  
**Date:** 3/19/2008 9:47 AM  
**Subject:** Re: Complaints and Requests for Investigation

Sir

Thank you for your response. I understand a lot more about the process and will proceed accordingly. My ignorance exceeds my drive.

Sincerely

Bill Lilly

On 3/19/08, Dennis Beck <Dbeck@energy.state.ca.us> wrote:

>

> Mr. Lilly -

>

> Filing a complaint or request for investigation is the formal process by  
> which violations of the CEC's regulations are dealt with. You are the one  
> who brought the allegations of MASCO's violations to the CEC, and you have  
> certain knowledge about the facts that the CEC does not (for example, you  
> were the one who saw the MASCO paycheck given to the Energy Sense employee,  
> not anyone at the CEC). As such, it appears that you are the person best  
> situated to initiate a formal complaint or request for investigation.

>

> One of the concerns you highlighted during our meeting last week was the  
> length of time that has passed since you first approached the CEC with your  
> allegations about MASCO. By filing a complaint or request for  
> investigation, all parties and the CEC will be required to comply with  
> specific time frames that are set forth in the regulations, and thus the  
> matter cannot be ignored or "put on the back burner" by the parties,  
> including MASCO, or the CEC. This will give you a measure of predictability  
> about the process and the time it will take to come to a resolution.

>

> \*Dennis L. Beck, Jr.\*  
> Senior Staff Counsel  
> California Energy Commission  
> 1516 Ninth Street, MS-14  
> Sacramento, CA 95814  
> (916) 654-3974  
> Dbeck@energy.state.ca.us

>

> >>> "Bill Lilly" <bill.lilly@califliving.com> 3/18/2008 6:11 PM >>>

>

> Dennis  
> MASCO has not violated any law or statute that I or my firm has devised.  
> They have done nothing legally against any rater firm in the State of  
> California. What they have done is violated the Standards you and the CEC  
> has devised and passed yet you will do nothing. We have to file a complaint  
> for ignoring your Standards. What is wrong with this picture?

>

> Does this mean I can ignore all testing protocol and you will do nothing?

> Bill

>

>

>

0000110

> On 3/18/08, Dennis Beck <Dbeck@energy.state.ca.us> wrote:  
>>  
>> That has not changed.  
>>  
>>>> "Bill Lilly" <bill.lilly@califliving.com> 3/18/2008 2:23 PM >>>  
>> Dennis  
>> Thank you for getting this to me and I will follow up. It is a sad note  
>> to find out after all of the meetings, conversation and e-mail you gave us  
>> another mountain to climb. This could of been addressed last year or the  
>> year before. I will file the documentation no latter then next week.  
>>  
>> Per our discussion last week Bill Staack stated his letter to Dave Bell  
>> President of Energy Sense is a public document therefore it can be decimated  
>> to our Builders. Has this changed?  
>>  
>> Sincerely  
>> Bill  
>>  
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>> On 3/18/08, Dennis Beck <Dbeck@energy.state.ca.us> wrote:  
>>>  
>>> Mr. Lilly -  
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>>> Pursuant to our telephone conversation, I am sending you copies  
>>> of Sections 1230 through 1237 of Title 20 of the California Code of  
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>>> process for filing complaints and requests for investigation with the CEC,  
>>> and the procedures that follow.  
>>>  
>>> If you wish to file a complaint or request for investigation, please  
>>> send it to the following address:  
>>>  
>>> California Energy Commission  
>>> Office of the Chief Counsel  
>>> Attn: Dennis Beck, Senior Staff Counsel  
>>> 1516 Ninth Street, MS-14  
>>> Sacramento, CA 95816  
>>>  
>>> Please ensure that the complaint or request for investigation includes  
>>> all the information and complies with all the requirements set forth in  
>>> Section 1231. If it does not, it may be dismissed as insufficient.  
>>>  
>>> Thank you.  
>>>  
>>> \*Dennis L. Beck, Jr.\*  
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>>>  
>>>  
>>  
>>  
>> --

0000111

> > Bill Lilly  
> > President  
> > California Living & Energy  
> > 3015 Dale Ct  
> > Ceres, Ca. 95307  
> > www.califliving.com  
> > 209-538-2879 x11  
> >  
>  
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0000112

**Dennis Beck - RE: Complaints and Requests for Investigation**

---

**From:** "DAVE HEGARTY" <davehegarty@ducttesters.com>  
**To:** "Dennis Beck" <Dbeck@energy.state.ca.us>  
**Date:** 3/19/2008 11:46 AM  
**Subject:** RE: Complaints and Requests for Investigation

---

Thank You Mr. Beck. There remains one question as to whose responsibility it is to oversee the REGs and Title 20 and those who would violate the standards and the Regs? I know it is a slippery slope, but as you can see from all the emails flying back and forth, no one has answered the question, and every time we think we have a commitment, another issue or obstacle is put out in front. We are only trying to level the playing field for all Raters that live and die by the Regs and Rules. We certainly appreciate your concerns in getting this thing right and moving forward. I just still as Bill is, haunted by the fact that in all other Government Regs, the complaints on this type of issue comes from the governing/regulator Staff, at least when pointed out to them. So with that, and with all due respect, can you help us find out or answer the question as to why the CEC has to have a complaint from an outside the agency, when the violation may exist within the REGs. We just had a case where no complaint was necessary to be filed, but the CEC through Tav and the Provider CHEERS immediately reacted to regulation violations and fraud. Thanks and again with the upmost respect and sincerity, Dave HEGARTY

---

**From:** Dennis Beck [mailto:Dbeck@energy.state.ca.us]  
**Sent:** Wednesday, March 19, 2008 11:11 AM  
**To:** davehegarty@ducttesters.com  
**Subject:** RE: Complaints and Requests for Investigation

Mr. Hegarty -

Attached is an e-mail exchange between Bill Lilly and myself from this morning, which I hope will answer the questions and concerns you pose in your e-mail.

**Dennis L. Beck, Jr.**  
 Senior Staff Counsel  
 California Energy Commission  
 1516 Ninth Street, MS-14  
 Sacramento, CA 95814  
 (916) 654-3974  
[Dbeck@energy.state.ca.us](mailto:Dbeck@energy.state.ca.us)

**0000113**

>>> "DAVE HEGARTY" <davehegarty@ducttesters.com> 3/18/2008 5:43 PM >>>

Dennis Beck: Hi, my name is Dave Hegarty, and I am a Rater. I wanted to understand the CEC position better than I do now, because of the length of time this issue has gone undetermined. In the articles you sent Bill Lilly, indicate that at anytime, a member or staff could have filed a complaint or

request for Investigation. Is that correct? The reason for asking is that, it would seem (and I say this with all due respect) an entity or person could knowingly violate these regulations and continue to do so (operate), even with the Staff/Commissions' knowledge, and profit from that violation, grow their business level and service to extensive levels, all in violation of that regulation, but without a formal complaint from anyone, would not be held to the standard of that regulation? In other words, as Masco grows their level of Business in this industry and their influence, they can continue to operate and profit at the risk of violation and jeopardy to the State's policies and energy issues? Please understand that these questions are not to inflame, but to understand so that all Raters have equal authority under the Title 20 jurisdiction. I personally, have a difficult time with understanding why Bill Lilly was not told that he must record a complaint or request for investigation, even to the point of our last meeting at the CEC on Wednesday, March 12, 2008. It was not brought to the meeting any formal complaint forms or procedures to complaint or request for investigation, even though the question was asked. It was in fact asked at the meeting, and the response was that we could now consider that this meeting was the formal complaint (of course that was after the question was asked).

We the Raters, (organization of CHEERS, CALCERTS and CBPCA Raters) are very much concerned for the issues that Bill Staack posed to the MASCO Corporations David Bell, in his letter dated May 15, 2008; for which they, CEC and Bill Staack said has gone unanswered.

I would like to offer also, the information obtained and sent to TAV on the wording used in the CEC regs explaining the determination of conflict, as "real or perceived" as conflict. So when you read this part of the explanation, even if real weren't credible, certainly in this instant case, PRECEIVED is credible. "There cannot be a real or perceived conflict of interest". TAV has that email dated February 7, 2008. Our concern is that anyone can operate in violation and Staff or Commissioners cannot respond without formal complaints or requests for investigation. As we just saw in a case in which I initiated to the CEC, Sawyers Heating and Air was operating in this manner and it did not take Staff any time at all to ferret out the truth and make determinations swiftly and decisively. So in wondering about these issues and seeing two entirely different responses from CEC and Staff, we need to understand how and what the parameters and procedures are. Thanks for your response in advance.  
Dave

---

**From:** Dennis Beck [mailto:Dbeck@energy.state.ca.us]  
**Sent:** Tuesday, March 18, 2008 11:56 AM  
**To:** bill.lilly@califiving.com  
**Cc:** davehegarty@ducttesters.com; Bill Pennington; Tav Commins; William Staack  
**Subject:** Complaints and Requests for Investigation

Mr. Lilly -

Pursuant to our telephone conversation, I am sending you copies of Sections 1230 through 1237 of Title 20 of the California Code of Regulations, which are attached to this e-mail. These sections explain the process for filing complaints and requests for investigation with the CEC, and the procedures that follow.

If you wish to file a complaint or request for investigation, please send it to the following address:

California Energy Commission  
Office of the Chief Counsel

**0000114**

Attn: Dennis Beck, Senior Staff Counsel  
1516 Ninth Street, MS-14  
Sacramento, CA 95816

Please ensure that the complaint or request for investigation includes all the information and complies with all the requirements set forth in Section 1231. If it does not, it may be dismissed as insufficient.

Thank you.

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**0000115**



## Dennis Beck - Re: Complaints and Requests for Investigation

---

**From:** Dennis Beck  
**To:** Bill Lilly  
**Date:** 3/19/2008 2:22 PM  
**Subject:** Re: Complaints and Requests for Investigation  
**CC:** Bill Pennington; Tav Commins; William Staack  
**Attachments:** Title 20, Sections 1670 - 1675.pdf

---

Mr. Lilly -

I wanted to pass along to you a copy of the California Home Energy Rating System Program regulations themselves, Sections 1670 - 1675 of Title 20, which are attached to this e-mail. Of course, you may already have a copy of them.

Section 1673(i) contains the conflict of interest provisions, and the definition of "independent entity" is found in Section 1671. Also see Section 1673(b)(3) for the requirement that raters comply with the conflict of interest requirements of Section 1673(i).

I should note that Section 1675(b) specifically references the complaint proceedings in Section 1230 et seq. as the process to be used in filing a complaint. Section 1675(b) further states that each provider shall provide all information requested by the CEC regarding any complaint proceeding -- which means that the use of the formal complaint process gives the CEC the authority to request and receive all the necessary information to resolve the complaint. Also, as set forth in Section 1675(c), by using the formal complaint process the CEC has the authority to revoke the certification of a provider if there is determined to be a violation.

### Dennis L. Beck, Jr.

Senior Staff Counsel  
 California Energy Commission  
 1516 Ninth Street, MS-14  
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[Dbeck@energy.state.ca.us](mailto:Dbeck@energy.state.ca.us)

>>> "Bill Lilly" <[bill.lilly@califliving.com](mailto:bill.lilly@califliving.com)> 3/19/2008 9:47 AM >>>

Sir

Thank you for your response. I understand a lot more about the process and will proceed accordingly. My ignorance exceeds my drive.

Sincerely

Bill Lilly

On 3/19/08, **Dennis Beck** <[Dbeck@energy.state.ca.us](mailto:Dbeck@energy.state.ca.us)> wrote:

Mr. Lilly -

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**0000116**

One of the concerns you highlighted during our meeting last week was the length of time that has passed since you first approached the CEC with your allegations about MASCO. By filing a complaint or request for investigation, all parties and the CEC will be required to comply with specific time frames that are set forth in the regulations, and thus the matter cannot be ignored or "put on the back burner" by the parties, including MASCO, or the CEC. This will give you a measure of predictability about the process and the time it will take to come to a resolution.

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>>> "Bill Lilly" <[bill.lilly@califliving.com](mailto:bill.lilly@califliving.com)> 3/18/2008 6:11 PM >>>

Dennis

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Does this mean I can ignore all testing protocol and you will do nothing?

Bill

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That has not changed.

>>> "Bill Lilly" <[bill.lilly@califliving.com](mailto:bill.lilly@califliving.com)> 3/18/2008 2:23 PM >>>

Dennis

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Sincerely  
Bill

On 3/18/08, **Dennis Beck** <[Dbeck@energy.state.ca.us](mailto:Dbeck@energy.state.ca.us)> wrote:

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**0000117**

California Energy Commission  
Office of the Chief Counsel  
Attn: Dennis Beck, Senior Staff Counsel  
1516 Ninth Street, MS-14  
Sacramento, CA 95816

Please ensure that the complaint or request for investigation includes all the information and complies with all the requirements set forth in Section 1231. If it does not, it may be dismissed as insufficient.

Thank you.

**Dennis L. Beck, Jr.**  
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--

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**0000118**

## Dennis Beck - RE: Complaints and Requests for Investigation

---

**From:** Dennis Beck  
**To:** davehegarty@ducttesters.com  
**Date:** 3/19/2008 2:53 PM  
**Subject:** RE: Complaints and Requests for Investigation  
**Attachments:** Title 20, Sections 1670 - 1675.pdf

---

Mr. Hegarty -

The way the regulations are written (see Section 1231 of the regulations I e-mailed yesterday), any person may file a complaint or request for investigation, including CEC staff. There is a requirement that the factual allegations in the complaint or request be accompanied by a declaration under penalty of perjury attesting to the truth and accuracy of those allegations (see Section 1231, subsection (b)(8)). I explained in my e-mail to Bill Lilly this morning that there are certain facts that he is personally aware of, but not CEC staff, such as the MASCO paycheck made-out to the Energy Sense employee. As such, it is more appropriate for Mr. Lilly to file the complaint or request so that these facts may be attested to by someone who has first-hand knowledge of them.

I was not involved in the Sawyers Heating and Air matter, so I can't explain to you the rationale behind the action taken and why a formal complaint procedure was not utilized. What I can tell you is that directly in the sections in Title 20 that deal with the California Home Energy Rating System Program (see attachment), the complaint process identified is that in Section 1230 et seq. (see Section 1675(b)). Also, Section 1675(b) states that each provider shall provide all information requested by the CEC regarding any complaint proceeding. So using the formal complaint process gives the CEC the authority to request and receive all the necessary information to resolve the complaint. Also, as set forth in Section 1675(c), by using the formal complaint process the CEC has the authority to revoke the certification of a provider if there is determined to be a violation.

So the answer to your questions "whose responsibility it is to oversee the REGs and Title 20 and those who would violate the standards and the Regs" and "why the CEC has to have a complaint from an outside the agency, when the violation may exist within the REGs," is that it is the responsibility of the CEC to enforce the regulations (of which Title 20 is a part), but that any person may begin the process by filing a complaint or request for investigation. As the complaint or request needs to be supported by factual allegations, it is usually best for the person or entity best able to attest to the truth and accuracy of those facts (not of the regulations themselves) to initiate the process. So the question of "whose regulations are being violated" is not the threshold issue; but rather "who has the best knowledge of the facts that constitute the violation." Also, by using the formal complaint process in Section 1230 et seq., the CEC has the authority to get the information it needs and to impose the appropriate penalty.

I hope this answers your questions.

**Dennis L. Beck, Jr.**  
 Senior Staff Counsel  
 California Energy Commission  
 1516 Ninth Street, MS-14  
 Sacramento, CA 95814  
 (916) 654-3974  
[Dbeck@energy.state.ca.us](mailto:Dbeck@energy.state.ca.us)

>>> "DAVE HEGARTY" <davehegarty@ducttesters.com> 3/19/2008 11:44 AM >>>

**0000119**

Thank You Mr. Beck. There remains one question as to whose responsibility it is to oversee the REGs and Title 20 and those who would violate the standards and the Regs? I know it is a slippery slope, but as you can see from all the emails flying back and forth, no one has answered the question, and every time we think we have a commitment, another issue or obstacle is put out in front. We are only trying to level the playing field for all Raters that live and die by the Regs and Rules. We certainly appreciate your concerns in getting this thing right and moving forward. I just still as Bill is, haunted by the fact that in all other Government Regs, the complaints on this type of issue comes from the governing/regulator Staff, at least when pointed out to them. So with that, and with all due respect, can you help us find out or answer the question as to why the CEC has to have a complaint from an outside the agency, when the violation may exist within the REGs. We just had a case where no complaint was necessary to be filed, but the CEC through Tav and the Provider CHEERS immediately reacted to regulation violations and fraud. Thanks and again with the upmost respect and sincerity, Dave HEGARTY

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>>> "DAVE HEGARTY" <davehegarty@ducttesters.com> 3/18/2008 5:43 PM >>>

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**0000120**

our last meeting at the CEC on Wednesday, March 12, 2008. It was not brought to the meeting any formal complaint forms or procedures to complaint or request for investigation, even though the question was asked. It was in fact asked at the meeting, and the response was that we could now consider that this meeting was the formal complaint (of course that was after the question was asked).

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Dave

---

**From:** Dennis Beck [mailto:Dbeck@energy.state.ca.us]  
**Sent:** Tuesday, March 18, 2008 11:56 AM  
**To:** bill.lilly@califliving.com  
**Cc:** davehegarty@ducttesters.com; Bill Pennington; Tav Commings; William Staack  
**Subject:** Complaints and Requests for Investigation

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Thank you.

**0000121**

**Dennis L. Beck, Jr.**  
 Senior Staff Counsel

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**0000122**

**Dennis Beck - RE: Complaints and Requests for Investigation**

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**From:** "DAVE HEGARTY" <davehegarty@ducttesters.com>  
**To:** "Dennis Beck" <dbeck@energy.state.ca.us>  
**Date:** 3/19/2008 5:06 PM  
**Subject:** RE: Complaints and Requests for Investigation

---

Mr. Beck: may I call you Dennis? Your information is greatly appreciated and in fact very informative. I learn more each time we come together on these types of things. I want you to know (before I ask the question again, and maybe in a slightly different way) that the time you have taken to explain and the detail as well as the fact sheet presents you as a very impressive person. I was fearful that our requests would be viewed as not so cooperative. Thank You so very much. You have set a tone for this issue in a way that show respect and effort.

I do thought want to ask, given the questions and statements and , if you will, tone of Mr. Staack's letter, why is it that, based on his initial findings, has the CEC not found it advisable to formally investigate the issue as it relates to "conflict of interest" and the wording used in the CEC Title 20 explanation of conflict of interested, and that is "REAL or PERCEIVED". While I got a lot out of your answer, I respectfully ask, which I thought was part of the question in the email, ***why has the enforcement body of CEC or those responsible for the regulation violations (staff) asked for or filed for an investigation into the matter?*** I realize that in effect Mr. Staack's letter of May 15, 2008 can be considered a start into the investigation or some effort to do so, but it has been a year or so now, and if you haven't yet looked at all the emails that have gone back and forth to the CEC on the matter, I urge you to do so. CHEERS or someone asked that another outside party investigate, and while that investigation concluded as did Mr. Staack's, still nothing was ever formally submitted by CEC or the outside CHEERS parties. I very much urge you to get a hold of all emails and letters concerning this matter to better understand Mr. Lilly's and all Raters frustration with this issue. While they (the Raters) strive to adhere to the spirit as well as the letter of the law, others are being allowed (knowingly) to violate or appear to violate the Regs and the "conflict of interest rule". If the Spirit of the law can be translated into "perceived" as in the explanation of the Reg., then just the very fact that there is a 'PERCEIVED' conflict is enough for the CEC to investigate the issue regardless of outside knowledge of details beyond the scope of other firms or Raters. In other words, it would seem to be obvious to anyone ( and I know the law sees things differently than laymen) that there appears to be a conflict here and the issues are being "held off" so to speak by the Staff. Please, Please understand this is not an attack on Staff by any means. We just need to understand why Staff has not "on its own" followed up or investigated this matter more vigorously. And I hope that isn't offensive to anyone, just an honest effort to understand the details of the thinking behind this issue. As this issue seems to be cut and dried to Raters at least, that a formal investigation and determination needs to be mad so that others have the same opportunity that is being afforded to Masco and not like companies such as HVAC contractors and other insulation contractors. How about window contractors getting into HERS ratings and overseeing Energy Star installation of windows as well. We have seen a case in Los Banos California, and it is on the record at the jurisdiction, they will tell you that windows and window companies have tried to pass off less valued windows than were claimed in the T-24's (CF1R). this is a matter of record, I urge you to look into this and other allegations of such matters. In ending, I would like again to urge and request that your office look into the entirety of the email and letters initiated on and about this issue. You will be amazed at the way things have transpired. Everything from, already confirming issues to asking them again of different people, only to get bombarded by emails that confirmed that Staff already knew the question's answer. Now I am starting to sound impatient, and

**0000123**



for that I apologize. As I really just want to understand all the issues and the thinking behind them. Thanks for letting me ramble, but the question is a legitimate one, don't you think? Thanks again.

Dave

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**From:** Dennis Beck [mailto:Dbeck@energy.state.ca.us]  
**Sent:** Wednesday, March 19, 2008 2:54 PM  
**To:** davehegarty@ducttesters.com  
**Subject:** RE: Complaints and Requests for Investigation

Mr. Hegarty -

The way the regulations are written (see Section 1231 of the regulations I e-mailed yesterday), any person may file a complaint or request for investigation, including CEC staff. There is a requirement that the factual allegations in the complaint or request be accompanied by a declaration under penalty of perjury attesting to the truth and accuracy of those allegations (see Section 1231, subsection (b)(8)). I explained in my e-mail to Bill Lilly this morning that there are certain facts that he is personally aware of, but not CEC staff, such as the MASCO paycheck made out to the Energy Sense employee. As such, it is more appropriate for Mr. Lilly to file the complaint or request so that these facts may be attested to by someone who has first-hand knowledge of them.

I was not involved in the Sawyers Heating and Air matter, so I can't explain to you the rationale behind the action taken and why a formal complaint procedure was not utilized. What I can tell you is that directly in the sections in Title 20 that deal with the California Home Energy Rating System Program (see attachment), the complaint process identified is that in Section 1230 et seq. (see Section 1675(b)). Also, Section 1675(b) states that each provider shall provide all information requested by the CEC regarding any complaint proceeding. So using the formal complaint process gives the CEC the authority to request and receive all the necessary information to resolve the complaint. Also, as set forth in Section 1675(c), by using the formal complaint process the CEC has the authority to revoke the certification of a provider if there is determined to be a violation.

So the answer to your questions "whose responsibility it is to oversee the REGs and Title 20 and those who would violate the standards and the Regs" and "why the CEC has to have a complaint from an outside the agency, when the violation may exist within the REGs," is that it is the responsibility of the CEC to enforce the regulations (of which Title 20 is a part), but that any person may begin the process by filing a complaint or request for investigation. As the complaint or request needs to be supported by factual allegations, it is usually best for the person or entity best able to attest to the truth and accuracy of those facts (not of the regulations themselves) to initiate the process. So the question of "whose regulations are being violated" is not the threshold issue; but rather "who has the best knowledge of the facts that constitute the violation." Also, by using the formal complaint process in Section 1230 et seq., the CEC has the authority to get the information it needs and to impose the appropriate penalty.

I hope this answers your questions.

**Dennis L. Beck, Jr.**  
 Senior Staff Counsel  
 California Energy Commission  
 1516 Ninth Street, MS-14  
 Sacramento, CA 95814  
 (916) 654-3974

0000124

[Dbeck@energy.state.ca.us](mailto:Dbeck@energy.state.ca.us)

>>> "DAVE HEGARTY" <davehegarty@ducttesters.com> 3/19/2008 11:44 AM >>>

Thank You Mr. Beck. There remains one question as to whose responsibility it is to oversee the REGs and Title 20 and those who would violate the standards and the Regs? I know it is a slippery slope, but as you can see from all the emails flying back and forth, no one has answered the question, and every time we think we have a commitment, another issue or obstacle is put out in front. We are only trying to level the playing field for all Raters that live and die by the Regs and Rules. We certainly appreciate your concerns in getting this thing right and moving forward. I just still as Bill is, haunted by the fact that in all other Government Regs, the complaints on this type of issue comes from the governing/regulator Staff, at least when pointed out to them. So with that, and with all due respect, can you help us find out or answer the question as to why the CEC has to have a complaint from an outside the agency, when the violation may exist within the REGs. We just had a case where no complaint was necessary to be filed, but the CEC through Tav and the Provider CHEERS immediately reacted to regulation violations and fraud. Thanks and again with the upmost respect and sincerity, Dave HEGARTY

---

**From:** Dennis Beck [mailto:[Dbeck@energy.state.ca.us](mailto:Dbeck@energy.state.ca.us)]  
**Sent:** Wednesday, March 19, 2008 11:11 AM  
**To:** davehegarty@ducttesters.com  
**Subject:** RE: Complaints and Requests for Investigation

Mr. Hegarty -

Attached is an e-mail exchange between Bill Lilly and myself from this morning, which I hope will answer the questions and concerns you pose in your e-mail.

**Dennis L. Beck, Jr.**  
 Senior Staff Counsel  
 California Energy Commission  
 1516 Ninth Street, MS-14  
 Sacramento, CA 95814  
 (916) 654-3974  
[Dbeck@energy.state.ca.us](mailto:Dbeck@energy.state.ca.us)

>>> "DAVE HEGARTY" <davehegarty@ducttesters.com> 3/18/2008 5:43 PM >>>

Dennis Beck: Hi, my name is Dave Hegarty, and I am a Rater. I wanted to understand the CEC position better than I do now, because of the length of time this issue has gone undetermined. In the articles you sent Bill Lilly, indicate that at anytime, a member or staff could have filed a complaint or request for Investigation. Is that correct? The reason for asking is that, it would seem (and I say this with all due respect) an entity or person could knowingly violate these regulations and continue to do so (operate), even with the Staff/Commissions' knowledge, and profit from that violation, grow their business level and service to extensive levels, all in violation of that regulation, but without a formal complaint from anyone, would not be held to the standard of that regulation? In other words, as Masco grows their level of Business in this industry and their influence, they can continue to operate

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and profit at the risk of violation and jeopardy to the State's policies and energy issues? Please understand that these questions are not to inflame, but to understand so that all Raters have equal authority under the Title 20 jurisdiction. I personally, have a difficult time with understanding why Bill Lilly was not told that he must record a complaint or request for investigation, even to the point of our last meeting at the CEC on Wednesday, March 12, 2008. It was not brought to the meeting any formal complaint forms or procedures to complaint or request for investigation, even though the question was asked. It was in fact asked at the meeting, and the response was that we could now consider that this meeting was the formal complaint (of course that was after the question was asked).

We the Raters, (organization of CHEERS, CALCERTS and CBPCA Raters) are very much concerned for the issues that Bill Staack posed to the MASCO Corporations David Bell, in his letter dated May 15, 2008, for which they, CEC and Bill Staack said has gone unanswered.

I would like to offer also, the information obtained and sent to TAV on the wording used in the CEC regs explaining the determination of conflict, as "real or perceived" as conflict. So when you read this part of the explanation, even if real weren't credible, certainly in this instant case, PRECEIVED is credible. " There cannot be a real or perceived conflict of interest". Tav has that email dated February 7, 2008. Our concern is that anyone can operate in violation and Staff or Commissioners cannot respond without formal complaints or requests for investigation. As we just saw in a case in which I initiated to the CEC, Sawyers Heating and Air was operating in this manner and it did not take Staff any time at all to ferret out the truth and make determinations swiftly and decisively. So in wondering about these issues and seeing two entirely different responses from CEC and Staff, we need to understand how and what the parameters and procedures are. Thanks for your response in advance.  
Dave

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**From:** Dennis Beck [mailto:Dbeck@energy.state.ca.us]  
**Sent:** Tuesday, March 18, 2008 11:56 AM  
**To:** bill.lilly@califliving.com  
**Cc:** davehegarty@ducttesters.com; Bill Pennington; Tav Commings; William Staack  
**Subject:** Complaints and Requests for Investigation

Mr. Lilly -

Pursuant to our telephone conversation, I am sending you copies of Sections 1230 through 1237 of Title 20 of the California Code of Regulations, which are attached to this e-mail. These sections explain the process for filing complaints and requests for investigation with the CEC, and the procedures that follow.

If you wish to file a complaint or request for investigation, please send it to the following address:

California Energy Commission  
 Office of the Chief Counsel  
 Attn: Dennis Beck, Senior Staff Counsel  
 1516 Ninth Street, MS-14  
 Sacramento, CA 95816

Please ensure that the complaint or request for investigation includes all the information and complies with all the requirements set forth in Section 1231. If it does not, it may be dismissed as insufficient.

**0000126**

Thank you.

**Dennis L. Beck, Jr.**  
Senior Staff Counsel  
California Energy Commission  
1516 Ninth Street, MS-14  
Sacramento, CA 95814  
(916) 654-3974  
[Dbeck@energy.state.ca.us](mailto:Dbeck@energy.state.ca.us)

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**0000127**

## Dennis Beck - RE: Complaints and Requests for Investigation

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**From:** Dennis Beck  
**To:** davehegarty@ducttesters.com  
**Date:** 3/20/2008 11:02 AM  
**Subject:** RE: Complaints and Requests for Investigation

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Mr. Hegarty -

I did not get involved in this matter, and didn't know anything about it, until the day of our meeting on March 12. So I don't have any insight to share with you as to why things were or were not done about this matter before that day. I know that you and Mr. Lilly are frustrated at the time it has taken to move the matter forward. But, as I have tried to emphasize in the e-mails of the last few days, by filing a formal complaint or request for investigation there are specific deadlines that must be complied with. This will give everyone some certainty as to the steps that will be taken and when. I believe the most efficient use of everyone's time and energy is to focus on what is to be done from here and now -- this is how I will be concentrating my time and energy, and I encourage to do so as well.

**Dennis L. Beck, Jr.**  
 Senior Staff Counsel  
 California Energy Commission  
 1516 Ninth Street, MS-14  
 Sacramento, CA 95814  
 (916) 654-3974  
[Dbeck@energy.state.ca.us](mailto:Dbeck@energy.state.ca.us)

>>> "DAVE HEGARTY" <davehegarty@ducttesters.com> 3/19/2008 5:04 PM >>>

Mr. Beck: may I call you Dennis? Your information is greatly appreciated and in fact very informative. I learn more each time we come together on these types of things. I want you to know (before I ask the question again, and maybe in a slightly different way) that the time you have taken to explain and the detail as well as the fact sheet presents you as a very impressive person. I was fearful that our requests would be viewed as not so cooperative. Thank You so very much. You have set a tone for this issue in a way that show respect and effort.

I do thought want to ask, given the questions and statements and , if you will, tone of Mr. Staack's letter, why is it that, based on his initial findings, has the CEC not found it advisable to formally investigate the issue as it relates to "conflict of interest" and the wording used in the CEC Title 20 explanation of conflict of interested, and that is "REAL or PERCEIVED". While I got a lot out of your answer, I respectfully ask, which I thought was part of the question in the email, *why has the enforcement body of CEC or those responsible for the regulation violations (staff) asked for or filed for an investigation into the matter?* I realize that in effect Mr. Staack's letter of May 15, 2008 can be considered a start into the investigation or some effort to do so, but it has been a year or so now, and if you haven't yet looked at all the emails that have gone back and forth to the CEC on the matter, I urge you to do so. CHEERS or someone asked that another outside party investigate, and while that investigation concluded as did Mr. Staack's, still nothing was every formally submitted by CEC or the outside CHEERS parties. I very much urge you to get a hold of all emails and letters concerning this matter to better understand Mr. Lilly's and all Raters frustration with this issue. While they (the Raters) strive to adhere to the spirit as well as the letter of the law, others are being allowed (knowingly) to

**0000128**

violate or appear to violate the Regs and the "conflict of interest rule". If the Spirit of the law can be translated into "perceived" as in the explanation of the Reg., then just the very fact that there is a 'PERCEIVED' conflict is enough for the CEC to investigate the issue regardless of outside knowledge of details beyond the scope of other firms or Raters. In other words, it would seem to be obvious to anyone ( and I know the law sees things differently than laymen) that there appears to be a conflict here and the issues are being "held off" so to speak by the Staff. Please, Please understand this is not an attack on Staff by any means. We just need to understand why Staff has not "on its own" followed up or investigated this matter more vigorously. And I hope that isn't offensive to anyone, just an honest effort to understand the details of the thinking behind this issue. As this issue seems to be cut and dried to Raters at least, that a formal investigation and determination needs to be mad so that others have the same opportunity that is being afforded to Masco and not like companies such as HVAC contractors and other insulation contractors. How about window contractors getting into HERS ratings and overseeing Energy Star installation of windows as well. We have seen a case in Los Banos California, and it is on the record at the jurisdiction, they will tell you that windows and window companies have tried to pass off less valued windows than were claimed in the T-24's (CF1R). this is a matter of record, I urge you to look into this and other allegations of such matters. In ending, I would like again to urge and request that your office look into the entirety of the email and letters initiated on and about this issue. You will be amazed at the way things have transpired. Everything from, already confirming issues to asking them again of different people, only to get bombarded by emails that confirmed that Staff already knew the question's answer. Now I am starting to sound impatient, and for that I apologize. As I really just want to understand all the issues and the thinking behind them. Thanks for letting me ramble, but the question is a legitimate one, don't you think? Thanks again.

Dave

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**From:** Dennis Beck [mailto:Dbeck@energy.state.ca.us]  
**Sent:** Wednesday, March 19, 2008 2:54 PM  
**To:** davehegarty@ducttesters.com  
**Subject:** RE: Complaints and Requests for Investigation

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0000129

process the CEC has the authority to revoke the certification of a provider if there is determined to be a violation.

So the answer to your questions "whose responsibility it is to oversee the REGs and Title 20 and those who would violate the standards and the Regs" and "why the CEC has to have a complaint from an outside the agency, when the violation may exist within the REGs," is that it is the responsibility of the CEC to enforce the regulations (of which Title 20 is a part), but that any person may begin the process by filing a complaint or request for investigation. As the complaint or request needs to be supported by factual allegations, it is usually best for the person or entity best able to attest to the truth and accuracy of those facts (not of the regulations themselves) to initiate the process. So the question of "whose regulations are being violated" is not the threshold issue; but rather "who has the best knowledge of the facts that constitute the violation." Also, by using the formal complaint process in Section 1230 et seq., the CEC has the authority to get the information it needs and to impose the appropriate penalty.

I hope this answers your questions.

**Dennis L. Beck, Jr.**

Senior Staff Counsel

California Energy Commission

1516 Ninth Street, MS-14

Sacramento, CA 95814

(916) 654-3974

[Dbeck@energy.state.ca.us](mailto:Dbeck@energy.state.ca.us)

>>> "DAVE HEGARTY" <davehegarty@ducttesters.com> 3/19/2008 11:44 AM >>>

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**Sent:** Wednesday, March 19, 2008 11:11 AM

**To:** davehegarty@ducttesters.com

**Subject:** RE: Complaints and Requests for Investigation

Mr. Hegarty -

Attached is an e-mail exchange between Bill Lilly and myself from this morning, which I hope will answer the questions and concerns you pose in your e-mail.

**0000130**

**Dennis L. Beck, Jr.**  
 Senior Staff Counsel  
 California Energy Commission  
 1516 Ninth Street, MS-14  
 Sacramento, CA 95814  
 (916) 654-3974  
[Dbeck@energy.state.ca.us](mailto:Dbeck@energy.state.ca.us)

>>> "DAVE HEGARTY" <davehegarty@ducttesters.com> 3/18/2008 5:43 PM >>>

Dennis Beck: Hi, my name is Dave Hegarty, and I am a Rater. I wanted to understand the CEC position better than I do now, because of the length of time this issue has gone undetermined. In the articles you sent Bill Lilly, indicate that at anytime, a member or staff could have filed a complaint or request for Investigation. Is that correct? The reason for asking is that, it would seem (and I say this with all due respect) an entity or person could knowingly violate these regulations and continue to do so (operate), even with the Staff/Commissions' knowledge, and profit from that violation, grow their business level and service to extensive levels, all in violation of that regulation, but without a formal complaint from anyone, would not be held to the standard of that regulation? In other words, as Masco grows their level of Business in this industry and their influence, they can continue to operate and profit at the risk of violation and jeopardy to the State's policies and energy issues? Please understand that these questions are not to inflame, but to understand so that all Raters have equal authority under the Title 20 jurisdiction. I personally, have a difficult time with understanding why Bill Lilly was not told that he must record a complaint or request for investigation, even to the point of our last meeting at the CEC on Wednesday, March 12, 2008. It was not brought to the meeting any formal complaint forms or procedures to complaint or request for investigation, even though the question was asked. It was in fact asked at the meeting, and the response was that we could now consider that this meeting was the formal complaint (of course that was after the question was asked).

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 Dave

---

**From:** Dennis Beck [mailto:[Dbeck@energy.state.ca.us](mailto:Dbeck@energy.state.ca.us)]  
**Sent:** Tuesday, March 18, 2008 11:56 AM  
**To:** [bill.lilly@califiving.com](mailto:bill.lilly@califiving.com)

**0000131**



**Cc:** davehegarty@ducttesters.com; Bill Pennington; Tav Commins; William Staack  
**Subject:** Complaints and Requests for Investigation

Mr. Lilly -

Pursuant to our telephone conversation, I am sending you copies of Sections 1230 through 1237 of Title 20 of the California Code of Regulations, which are attached to this e-mail. These sections explain the process for filing complaints and requests for investigation with the CEC, and the procedures that follow.

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Attn: Dennis Beck, Senior Staff Counsel  
1516 Ninth Street, MS-14  
Sacramento, CA 95816

Please ensure that the complaint or request for investigation includes all the information and complies with all the requirements set forth in Section 1231. If it does not, it may be dismissed as insufficient.

Thank you.

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Sacramento, CA 95814  
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[Dbeck@energy.state.ca.us](mailto:Dbeck@energy.state.ca.us)

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**0000133**

## Dennis Beck - Financial Conflict of Interest

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**From:** "DAVE HEGARTY" <davehegarty@ducttesters.com>  
**To:** "Mike Bachand" <mike@calcerts.com>, "Robert Scott" <rscott@cheers.org>, "Max McKinney" <hvacconsultant@sbcglobal.net>, <airapparent@comcast.net>, "Allen Amaro" <amaroconstruction@yahoo.com>, "Bill Lilly" <bill.lilly@califliving.com>, <bretkillings@yahoo.com>, <bill\_erwin@hotmail.com>, "Bill Mattinson" <billm@soldata.com>, <donn@greenhomesavvy.com>, "Dennis Beck" <Dbeck@energy.state.ca.us>, <donnegarty@ducttesters.com>, "Gordon Beall" <foservices@comcast.net>, <golferjohn@starstream.net>, "G. LeBron" <galo@wredco.net>, <gmahoney@cityofdavis.org>, <hvacconsultant@msn.com>, <hersrater@sbcglobal.net>, <hoffmaninsulation@yahoo.com>, <john@certified-ec.com>, <jamader@rhainc.com>, <lamader@rhainc.com>, "Jeff Matiska" <jeff@optimalhomeperformance.com>, <jennifer@hersolar.com>, "Jeff" <jeff.chapman@califliving.com>, "Kurt Pisor" <Kpisor@energy.state.ca.us>, <krisheslop@yahoo.com>, "Larry" <larry.stubbert@califliving.com>, <miket@sti.net>, <miguel@whainc.com>, <mwood@cityofdavis.org>, "Paul Rosen" <paul@northbayenergy.com>, <therowz@att.net>, "Tav Commins" <Tcommins@energy.state.ca.us>, <wstaack@energy.state.ca.us>  
**Date:** 4/8/2008 8:59 PM  
**Subject:** Financial Conflict of Interest

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As part of the ongoing interest in getting to the bottom of whether MASCO is in violation of the CEC and Title 20 by rating energy measures as installed by their very own companies (companies owned and operated by MASCO which owns Energy Sense, a HERS Rater firm operated from Texas By Masco, working and verifying in California) we are submitting to you all the wording and quotes from the CEC manuals and sections governing and describing the criteria for RATERS and for Providers, under those standards. We ask you to take a look at the regulations as they appear from the CEC and respond to the website [www.CalHers.net](http://www.CalHers.net) with your feelings and comments on the issue. This is in hopes of moving the CEC to act on the situation and call for a formal investigation into the matter, with or without an OUTSIDE the AGENCY request for investigation. So far the CEC has not asked for or required the investigation into this ongoing matter and what many Raters think is clearly a violation. If we can politely move the Commission Staff

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to investigate and conclude as to any violation we can the play on the same field as MASCO or find that they are truly in violation of this regulation. The Commissions legal staff has written a letter (posted on the CalHers.net website) to MASCO more than one year ago asking for a response from Masco as to this allegation. Masco has not responded in this year, nor has the CEC legal staff or any staff member, to our knowledge followed up on any written correspondence with Masco, called for an investigation into this matter, or made any move to curb or determine a violation. If anyone knows of Commission or Staff movement in this matter that is contrary to this information, please notify us or the website so that we may correct this error, including Staff. We are attempting to bring credibility and higher standards to the issues of RATERS, not pointing out Staff or Commission issues beyond their control. An attempt to work with the Commission and Staff on these issues is in progress. Thanks

2005 Residential HERS Regulations Page 1- 1

Overview

## Overview

the HERS regulations, which provides the duties of HERS providers, the obligations of raters to provide true, accurate and complete reports of field verification findings (Section 1672 (d)), and rules for avoiding conflicts of interest between raters and builders and between raters and installing contractors (Section 1673 (i)).

## 7. Home Energy Rating Systems (HERS) Required Field Verification and Diagnostic Testing

### 7.1. California Home Energy Rating Systems

Compliance credit for particular energy efficiency measures, which the Commission specifies, requires field verification and diagnostic testing of as-constructed dwelling units (as defined in Section 7.9) by a certified HERS (Home Energy Rating System) rater. The Commission

**0000135**

approves HERS providers, subject to the Commission's HERS regulations, which appear in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 8, Sections 1670-1675. Approved HERS providers are authorized to certify HERS raters and maintain quality control over field verification and diagnostic testing ratings.

When compliance documentation indicates field verification and diagnostic testing of specific energy efficiency measures as a condition for complying with Title 24, Part 6, an approved HERS provider and certified HERS rater shall be used to conduct the field verification and diagnostic testing. HERS providers and raters shall be considered special inspectors by building departments, and shall demonstrate competence, to the satisfaction of the building official, for the visual inspections and diagnostic testing. The HERS provider and rater shall be independent entities from the builder or subcontractor installer of the energy efficiency improvements being tested and verified, and shall have no financial interest in the installation of the improvements. Third Party Quality Control Programs approved by the Commission may serve the function of HERS raters for field verification purposes as specified in Section 7.6.

#### ***7.7 Sampling for Additions or Alterations***

When compliance for an addition or alteration requires diagnostic testing and field verification, the building owner may choose for the testing and field verification to be completed for the dwelling unit alone or as part of a sample of dwelling units for which the same installing company has completed work that requires testing and field verification for compliance. The building owner or agent of the building owner shall complete the applicable portions of a Certificate of Compliance (CF-1R). The HERS provider shall define the group for sampling purposes as all dwelling units where the building permit applicant has chosen to have testing and field verification completed as part of a sample for the same installing company. The group shall be no larger than seven. The installing company may request a smaller group for sampling. Whenever the HERS rater for the group is changed, a new group will be established. Initial Field Verification and Testing shall be completed for the first dwelling unit in each group. Re sampling, Full Testing and Corrective Action shall be completed if necessary as specified by section 7.5.3.

Field verification may be completed by an approved Third Party Quality Control Program as specified in section 7.6. The group for sampling purposes shall be no larger than thirty when a Third Party Quality Control Program is used. The Third Party Quality Control Program may define the group instead of the Provider. When a Third Party Quality Control Program is used, the CF-4R shall document that data checking has indicated that the dwelling unit complies. The building official may approve compliance based on the CF-4R on the condition that if sampling indicates that re-sampling, full testing and corrective action is necessary, such work shall be completed.

**HERS Rater** means a person certified by a Commission approved HERS Provider to perform the field verification and diagnostic testing required for demonstrating compliance with the standards

**Independent Entity** means having no financial interest in, and not advocating or recommending the use of any product or service as a means of gaining increased business with, firms or persons specified in Section 1673(i) of the California Home Energy Rating System Program regulations (California Code of Regulations, Title 20, Division 2, Chapter 4, Article 8).

**Financial Interest** means an ownership interest, debt agreement, or employer/employee relationship. Financial interest does not include ownership of less than 5% of the outstanding equity securities of a publicly traded corporation.

NOTE: The definitions of "independent entity" and "financial interest," together with Section 1673(i), prohibit conflicts of interest between providers and raters, or between providers/raters and builders/subcontractors.

No virus found in this outgoing message.

Checked by AVG.

Version: 7.5.519 / Virus Database: 269.22.9/1364 - Release Date: 4/7/2008 6:38 PM

**0000137**

**From:** Tav Commins  
**To:** William Staack  
**Date:** 5/21/2008 9:01 AM  
**Subject:** Fwd: RE: Masco job intimidated CalCERTS Rater  
**Attachments:** Bldg 10B.pdf; Signed Contract.pdf; CalCertsProjectFail1.jpg; CalCertsProjectInfo1.jpg; Contract Cancelled.pdf; JohnRichauComments.pdf; TommyYoungQIIreport.pdf

Did Bill Lilly ever file an official complaint about MASCO?

Tav

>>> "Max McKinney" <[hvacconsultant@sbcglobal.net](mailto:hvacconsultant@sbcglobal.net)> 5/19/2008 7:51 PM >>>  
Morning Tav,

Sorry I took so long. We needed to complete the CalCerts records, first.

- 1) I have attached screen shots of the CalCerts website data entry, project and failure.
- 2) I have attached Emails from Tommy Young about the inspection date.
- 3) I included the signed quote/ contract that spells out what is required.
- 4) I can forward several Emails that Tommy Young sent to the builder explaining the QII process.
- 5) I included the Email from Classic Communities, (the project mgrs), cancelling the contract.
- 6) I have a recorded voicemail from Adam Kafes at Classic that is very damaging and indicative of the contractor's willingness to go along with "a less critical inspection". The NEW RATER will be in the CHEERS database after the QII can be completed. (unless they are really illegal and have passed the QII BEFORE the attic insulation is installed). Mike Bachand has heard this voicemail recording. (I am still trying to digitize it).

Please check the CHEERS database for this project to see if it is a MASCO rater. I advise that Kurt in the NSHP dept be notified that this project did not pass and should not be allowed to receive NSHP rebates unless a QUALITY RATER goes in for inspections.

The inspection was done on 5/13/08. The models were being sheet rocked on 5/15/08. The MASCO insulation foreman was the aggressor during this inspection, and should be barred from being on site in the future!!!

IF A MASCO RATER DOES THE QII INSPECTION, THEN THAT IS A MAJOR CONFLICT OF INTEREST!!! CEC MUST PREVENT "THE FOX FROM GUARDING THE HEN HOUSE"  
The builder and project managers do not know, (or care), that these situations will cost them in the long run.

Max McKinney  
EACS Inc.  
916-698-4185

-----Original Message-----

From: Tav Commins [<mailto:Tcommins@energy.state.ca.us>]  
Sent: Friday, May 16, 2008 7:48 AM  
To: Mike Bachand

0000138

Cc: 'Max McKinney'  
Subject: Re: Masco job intimidated CalCERTS Rater

Max

If you can get me the name of the tract and address of the failed houses that would be helpful.

Tav

>>> "Mike Bachand" <mike@calcerts.com> 5/15/2008 5:48 PM >>>  
Hi, Tav. I have an unsettling report regarding a job in Los Altos. According to Max McKinney, his rater (Tommy Young) was doing an insulation inspection on the first model of a new project. He told the job super that the insulation was not going to pass. The insulation installer (Southcoast, I believe is the name, and Max tells me they are a Masco Company) was right there (5 of them). They asked the rater, "How long have you been a rater", and other intimidating remarks. The job super said he would use the EFL rater and fired Max. The EFL Rater apparently passed the job (it would be in the CHEERS database after the other HERS tests are completed). Max will get me all the info, but maybe you should call him and talk to him to get all the exact info.

I am not upset about having a rater fired by a builder. The reason for the upset is the Masco conflict of interest problem.

Mike

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## **TITLE 24 REPORT**

### **Title 24 Report for:**

Classics Communities at Sterling Park Building 10B  
1068 E. Meadow Circle  
Palo Alto, CA 94303

### **Project Designer:**

Bassenian Architects Lagoni  
2031 Orchard Drive  
Newport Beach, CA 92660  
(949) 553-9100

### **Report Prepared By:**

Srdjan Rebraca, P.E.  
ACIES Engineering  
111 W. Evelyn Ave., #301  
Sunnyvale, CA 94086  
(408) 522-5255

### **Job Number:**

2007019

### **Date:**

6/29/2007

The EnergyPro computer program has been used to perform the calculations summarized in this compliance report. This program has approval and is authorized by the California Energy Commission for use with both the Residential and Nonresidential 2005 Building Energy Efficiency Standards.

This program developed by EnergySoft, LLC - [www.energysoft.com](http://www.energysoft.com).

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## Certificate Of Compliance : Residential

(Part 1 of 4) CF-1R

Classics Communities at Sterling Park Building 10B

6/29/2007

Project Title

Date

1068 E Meadow Circle Palo Alto

Project Address

Building Permit #

ACIES Engineering

(408) 522-5255

Documentation Author

Telephone

EnergyPro

4

Compliance Method

Climate Zone

Plan Check/Date

Field Check/Date

TDV (kBtu/sf-yr)	Standard Design	Proposed Design	Compliance Margin
Space Heating	17.07	12.70	4.37
Space Cooling	3.60	2.66	0.94
Fans	1.42	1.16	0.26
Domestic Hot Water	10.96	10.25	0.70
Pumps	0.00	0.00	0.00
Totals	33.04	26.77	6.27

Percent better than Standard:

19.0%

## BUILDING COMPLIES - HERS VERIFICATION REQUIRED

Building Type: ☐ Single Family☐ Addition

Total Conditioned Floor Area:

2,400 ft<sup>2</sup>☒ Multi Family☐ Existing + Add/Alt

Existing Floor Area:

n/a ft<sup>2</sup>

Building Front Orientation:

(SE) 135 deg

Raised Floor Area:

517 ft<sup>2</sup>

Fuel Type:

Natural Gas

Slab on Grade Area:

391 ft<sup>2</sup>

Fenestration:

Average Ceiling Height:

9.0 ft

Area: 422 ft<sup>2</sup>

Avg. U: 0.37

Number of Dwelling Units:

1.00

Ratio: 17.6%

Avg. SHGC: 0.32

Number of Stories:

3

## BUILDING ZONE INFORMATION

Zone Name	Floor Area	Volume	# of Units	Zone Type	Thermostat Type	Vent Hgt.	Area
GEE-1	2,400	21,483	1.00	Conditioned	Setback	8	n/a

## OPAQUE SURFACES

Type			Frame	Area	U-Fac.	Insulation	Cav. Cont.	Act. Azm.	Tilt	Gains	Condition	JA IV Reference	Location / Comments
										Y / N	Status		
Roof	Wood	50	0.032	R-30	R-0.0	45	23	X			New	01-A17	10B Unit 3rd Floor
Wall	Wood	118	0.095	R-15	R-0.0	315	90	X			New	09-A4	10B Unit 3rd Floor
Roof	Wood	195	0.032	R-30	R-0.0	45	23	X			New	01-A17	10B Unit 3rd Floor
Roof	Wood	56	0.032	R-30	R-0.0	225	23	X			New	01-A17	10B Unit 3rd Floor
Roof	Wood	56	0.032	R-30	R-0.0	45	23	X			New	01-A17	10B Unit 3rd Floor
Wall	Wood	192	0.095	R-15	R-0.0	225	90	X			New	09-A4	10B Unit 2nd Floor
Wall	Wood	109	0.095	R-15	R-0.0	315	90	X			New	09-A4	10B Unit 2nd Floor
Roof	Wood	192	0.032	R-30	R-0.0	225	23	X			New	01-A17	10B Unit 2nd Floor
Roof	Wood	210	0.032	R-30	R-0.0	135	14	X			New	01-A17	10B Unit 2nd Floor
Wall	Wood	124	0.095	R-15	R-0.0	135	90	X			New	09-A4	10B Unit 2nd Floor
Wall	Wood	101	0.095	R-15	R-0.0	225	90	X			New	09-A4	10B Unit 2nd Floor
Wall	Wood	66	0.095	R-15	R-0.0	315	90	X			New	09-A4	10B Unit 2nd Floor
Floor	Wood	61	0.034	R-30	R-0.0	0	180	X			New	21-A7	10B Unit 2nd Floor
Wall	Wood	53	0.095	R-15	R-0.0	315	90	X			New	09-A4	10B Unit 2nd Floor
Floor	Wood	66	0.034	R-30	R-0.0	0	180	X			New	21-A7	10B Unit 2nd Floor
Wall	Wood	21	0.095	R-15	R-0.0	135	90	X			New	09-A4	10B Unit 2nd Floor
Wall	Wood	102	0.095	R-15	R-0.0	45	90	X			New	09-A4	10B Unit 2nd Floor
Wall	Wood	150	0.095	R-15	R-0.0	315	90	X			New	09-A4	10B Unit 2nd Floor
Floor	Wood	185	0.034	R-30	R-0.0	0	180	X			New	21-A7	10B Unit 2nd Floor
Roof	Wood	185	0.032	R-30	R-0.0	45	23	X			New	01-A17	10B Unit 2nd Floor
Wall	Wood	76	0.095	R-15	R-0.0	45	90	X			New	09-A4	10B Unit 2nd Floor
Floor	Wood	205	0.034	R-30	R-0.0	0	180	X			New	21-A7	10B Unit 2nd Floor
Roof	Wood	155	0.032	R-30	R-0.0	135	14	X			New	01-A17	10B Unit 2nd Floor
Wall	Wood	140	0.095	R-15	R-0.0	45	90	X			New	09-A4	10B Unit 2nd Floor
Roof	Wood	145	0.032	R-30	R-0.0	135	14	X			New	01-A17	10B Unit 2nd Floor

Run Initiation Time: 06/29/07 15:15:39

Run Code: 1183155339

EnergyPro 4.3 by EnergySoft

User Number: 5387

Job Number: 2007019

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**Certificate Of Compliance : Residential**(Part 2 of 4) **CF-1R**Classics Communities at Sterling Park Building 10B  
Project Title6/29/2007  
Date**FENESTRATION SURFACES**

#	Type	Area	U-Factor <sup>1</sup>	SHGC <sup>2</sup>	True Azm.	Cond. Tilt	Stat.	Glazing Type	Location/ Comments
1	Window Rear (NW)	45.0	0.370 NFRC 0.32	NFRC	315	90 New	IWC 5300	Vinyl/Low-E	10B Unit 3rd Floor
2	Window Left (SW)	15.0	0.370 NFRC 0.32	NFRC	225	90 New	IWC 5300	Vinyl/Low-E	10B Unit 2nd Floor
3	Window Left (SW)	3.0	0.370 NFRC 0.32	NFRC	225	90 New	IWC 5300	Vinyl/Low-E	10B Unit 2nd Floor
4	Window Rear (NW)	3.0	0.370 NFRC 0.32	NFRC	315	90 New	IWC 5300	Vinyl/Low-E	10B Unit 2nd Floor
5	Window Front (SE)	7.5	0.370 NFRC 0.32	NFRC	135	90 New	IWC 5300	Vinyl/Low-E	10B Unit 2nd Floor
6	Window Front (SE)	15.0	0.370 NFRC 0.32	NFRC	135	90 New	IWC 5300	Vinyl/Low-E	10B Unit 2nd Floor
7	Window Left (SW)	30.0	0.370 NFRC 0.32	NFRC	225	90 New	IWC 5300	Vinyl/Low-E	10B Unit 2nd Floor
8	Window Left (SW)	15.0	0.370 NFRC 0.32	NFRC	225	90 New	IWC 5300	Vinyl/Low-E	10B Unit 2nd Floor
9	Window Rear (NW)	8.0	0.370 NFRC 0.32	NFRC	315	90 New	IWC 5300	Vinyl/Low-E	10B Unit 2nd Floor
10	Window Rear (NW)	3.0	0.370 NFRC 0.32	NFRC	315	90 New	IWC 5300	Vinyl/Low-E	10B Unit 2nd Floor
11	Window Right (NE)	36.0	0.370 NFRC 0.32	NFRC	45	90 New	IWC 5300	Vinyl/Low-E	10B Unit 2nd Floor
12	Window Rear (NW)	6.0	0.370 NFRC 0.32	NFRC	315	90 New	IWC 5300	Vinyl/Low-E	10B Unit 2nd Floor
13	Window Right (NE)	4.0	0.370 NFRC 0.32	NFRC	45	90 New	IWC 5300	Vinyl/Low-E	10B Unit 2nd Floor
14	Window Right (NE)	6.0	0.370 NFRC 0.32	NFRC	45	90 New	IWC 5300	Vinyl/Low-E	10B Unit 2nd Floor
15	Window Front (SE)	15.0	0.370 NFRC 0.32	NFRC	135	90 New	IWC 5300	Vinyl/Low-E	10B Unit 2nd Floor
16	Window Front (SE)	3.0	0.370 NFRC 0.32	NFRC	135	90 New	IWC 5300	Vinyl/Low-E	10B Unit 2nd Floor
17	Window Front (SE)	6.0	0.370 NFRC 0.32	NFRC	135	90 New	IWC 5300	Vinyl/Low-E	10B Unit 1st Floor
18	Window Right (NE)	36.0	0.370 NFRC 0.32	NFRC	45	90 New	IWC 5300	Vinyl/Low-E	10B Unit 1st Floor
19	Window Left (SW)	36.0	0.370 NFRC 0.32	NFRC	225	90 New	IWC 5300	Vinyl/Low-E	10B Unit 1st Floor

1. Indicates source either from NFRC or Table 116A.

2. Indicates source either from NFRC or Table 116B.

**INTERIOR AND EXTERIOR SHADING**

#	Exterior Shade Type	SHGC	Window Hgt.	Wd.	Overhang Len.	Hgt.	L.Ext.	R.Ext.	Left Fin Dist.	Len.	Hgt.	Right Fin Dist.	Len.	Hgt.
1	Bug Screen	0.76	5.0	3.0	0.5	1.8	3.0	3.0						
2	Bug Screen	0.76	5.0	3.0	1.0	1.1	1.8	5.6						
3	Bug Screen	0.76	1.0	3.0	1.0	1.1	2.6	2.6						
4	Bug Screen	0.76	1.0	3.0	0.8	0.5	0.3	3.0						
5	Bug Screen	0.76	1.5	5.0	1.0	1.1	2.6	2.6						
6	Bug Screen	0.76	5.0	3.0	1.0	1.1	2.6	0.5						
7	Bug Screen	0.76	5.0	3.0	0.5	1.0	3.0	0.3						
8	Bug Screen	0.76	5.0	3.0	0.5	1.0	0.3	3.0						
9	Bug Screen	0.76												
10	Bug Screen	0.76												
11	Bug Screen	0.76	6.0	3.0	1.0	1.1	2.6	0.5						
12	Bug Screen	0.76	6.0	1.0	0.5	1.0	1.8	3.0						
13	Bug Screen	0.76	1.0	4.0	1.0	0.8	2.4	2.4						
14	Bug Screen	0.76	6.0	1.0	0.5	0.8	1.0	3.0						
15	Bug Screen	0.76	5.0	3.0	1.0	1.1	3.0	0.8						
16	Bug Screen	0.76	1.0	3.0	1.0	1.1	3.0	0.8						
17	Bug Screen	0.76	6.0	1.0	0.8	0.5	1.2	1.2						
18	Bug Screen	0.76	6.0	3.0	0.8	0.5	0.8	3.0						
19	Bug Screen	0.76												

**THERMAL MASS FOR HIGH MASS DESIGN**

Type	Area (sf)	Thick. (in.)	Heat Cap.	Inside Cond.	R-Val.	JA IV Reference	Condition Status	Location/ Comments

**PERIMETER LOSSES**

Type	Length	R-Val.	Insulation Location	JA IV Reference	Condition Status	Location/ Comments
Slab Perimeter	27	None	No Insulation	26-A1	New	10B Unit 1st Floor
Slab Perimeter	56	None	No Insulation	26-A1	New	10B Unit 1st Floor
Slab Perimeter	48	None	No Insulation	26-A1	New	10B Unit 1st Floor

Run Initiation Time: 06/29/07 15:15:39

Run Code: 1183155339

EnergyPro 4.3 by EnergySoft

User Number: 5387

Job Number: 2007019

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(Part 2 of 4) CF-1R

6/29/2007

Project Title

Date \_\_\_\_\_

## FENESTRATION SURFACES

PENETRATION SURFACES									
#	Type	Area	U-Factor <sup>1</sup>	SHGC <sup>2</sup>	True Azm.	Cond. Tilt	Stat.	Glazing Type	Location/ Comments
20	Window Left (SW)	13.5	0.370	NFRC-0.32	NFRC	225	90	New IWC 5300 Vinyl/Low-F	10B Unit 1st Floor
21	Window Rear (NW)	36.0	0.370	NFRC-0.32	NFRC	315	90	New IWC 5300 Vinyl/Low-E	10B Unit 1st Floor
22	Window Front (SE)	15.0	0.370	NFRC-0.32	NFRC	135	90	New IWC 5300 Vinyl/Low-E	10B Unit 1st Floor
23	Window Front (SE)	7.5	0.370	NFRC-0.32	NFRC	135	90	New IWC 5300 Vinyl/Low-E	10B Unit 1st Floor
24	Window Left (SW)	30.0	0.370	NFRC-0.32	NFRC	225	90	New IWC 5300 Vinyl/Low-F	10B Unit 1st Floor
25	Window Left (SW)	24.0	0.370	NFRC-0.32	NFRC	225	90	New IWC 5300 Vinyl/Low-F	10B Unit 1st Floor
26	Window Front (SE)	3.0	0.370	NFRC-0.32	NFRC	135	90	New IWC 5300 Vinyl/Low-F	10B Unit 1st Floor

1. Indicates source either from NFRC or Table 116A.

2. Indicates source either from NFRC or Table 116B.

## INTERIOR AND EXTERIOR SHADING

[illegible]

## THERMAL MASS FOR HIGH MASS. DESIGN

[illegible]

## PERIMETER LOSSES:

[illegible]

Run Initiation Time: 06/29/07 15:15:39

Run Code: 1183155339

EnergyPro 4.3 by EnergySoft

User Number: 5387

Job Number: 2007019

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**Certificate Of Compliance : Residential**(Part 3 of 4) **CF-1R**

Classics Communities at Sterling Park Building 10B

6/29/2007

Project Title

Date

**HVAC SYSTEMS**

Location	Heating Type	Minimum Eff	Cooling Type	Minimum Eff	Condition Status	Thermostat Type
GFF-1	Central Furnace	92% AFUE	Split Air Conditioner	13.0 SEER	New	Setback

**HVAC DISTRIBUTION**

Location	Heating	Cooling	Duct Location	Duct R-Value	Condition Status	Ducts Tested?
GFF-1	Ducted	Ducted	Attic	6.0	New	No

Hydronic Piping System Name	Pipe Length	Pipe Diameter	Insul. Thick.

**WATER HEATING SYSTEMS**

System Name	Water Heater Type	Distribution	# in Syst.	Rated Input (Btu/hr)	Tank Cap. (gal)	Condition Status	Energy Factor or RE	Standby Loss (%)	Tank Insul. R-Value Ext.
A O Smith GPS-75 (L)	Large Gas	All Pipes Ins	1	80,000	74	New	0.86	1.82%	0.0

**Multi-Family Central Water Heating Details**

Hot Water Pump				Hot Water Piping Length (ft)			Add 1/2" Insulation
Control	#	HP	Type	In Plenum	Outside	Buried	

**REMARKS****COMPLIANCE STATEMENT**

This certificate of compliance lists the building features and specifications needed to comply with Title 24, Parts 1 and 6 of the California Code of Regulations, and the administrative regulations to implement them. This certificate has been signed by the individual with overall design responsibility. The undersigned recognizes that compliance using duct design, duct sealing, verification of refrigerant charge and TXVs, insulation installation quality, and building envelope sealing require installer testing and certification and field verification by an approved HERSrater.

**Designer or Owner (per Business & Professions Code)**

Name: \_\_\_\_\_  
 Title/Firm: Bassenian Architects Lagoni  
 Address: 2031 Orchard Drive  
Newport Beach, CA 92660  
 Telephone: (949) 553-9100 Lic. #: \_\_\_\_\_

**Documentation Author**

Name: Srdjan Rebraca, P.E.  
 Title/Firm: ACIES Engineering  
 Address: 111 W. Evelyn Ave., #301  
Sunnyvale, CA 94086  
 Telephone: (408) 522-5255

(signature) \_\_\_\_\_ (date) \_\_\_\_\_

(signature) \_\_\_\_\_ (date) \_\_\_\_\_

**Enforcement Agency**

Name: \_\_\_\_\_  
 Title/Firm: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

**STAMP**

(signature) \_\_\_\_\_ (date) \_\_\_\_\_

Run Initiation Time: 06/29/07 15:15:39		Run Code: 1183155339	
EnergyPro 4.3 by EnergySoft	User Number: 5387	Job Number: 2007019	Page 7 of 10

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(Part 4 of 4) **CF-1R**

6/29/2007

Date \_\_\_\_\_

The local enforcement agency should pay special attention to the items specified in this checklist. These items require special written justification and documentation, and special verification to be used with the performance approach. The local enforcement agency determines the adequacy of the justification, and may reject a building or design that otherwise complies based on the adequacy of the special justification and documentation submitted.

[illegible]

Items in this section require field testing and/or verification by a certified home energy rater under the supervision of a CEC-approved HERS provider using CEC approved testing and/or verification methods and must be reported on the CF-4R installation certificate.

This building has credit for Insulation Quality Installation. A certified HERS rater must visually verify the installation of all insulation.

[illegible]

Run Code: 1183155339

Page 8 of 10

0000147



## Mandatory Measures Summary: Residential (Page 1 of 2) MF-1R

NOTE: Lowrise residential buildings subject to the Standards must contain these measures regardless of the compliance approach used. More stringent compliance requirements from the Certificate of Compliance supersede the items marked with an asterisk (\*) below. When this checklist is incorporated into the permit documents, the features noted shall be considered by all parties as minimum component performance specifications for the mandatory measures whether they are shown elsewhere in the documents or on this checklist only.

DESCRIPTION	Check or initial applicable boxes or check NA if not applicable and included with the permit application documentation.	N/A	DESIGNER	ENFORCE- MENT
<b>Building Envelope Measures</b>				
* § 150(a): Minimum R-19 in wood ceiling insulation or equivalent U-factor in metal frame ceiling.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
* § 150(b): Loose fill insulation manufacturer's labeled R-Value: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
* § 150(c): Minimum R-13 wall insulation in wood framed walls or equivalent U-factor in metal frame walls (does not apply to exterior mass walls).	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
* § 150(d): Minimum R-13 raised floor insulation in framed floors or equivalent U-factor.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
* § 150(e): Installation of Fireplaces, Decorative Gas Appliances and Gas Logs.				
1. Masonry and factory-built fireplaces have:				
a. closable metal or glass door covering the entire opening of the firebox	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. outside air intake with damper and control, flue damper and control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. No continuous burning gas pilot lights allowed.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
* § 150(f): Air retarding wrap installed to comply with § 151 meets requirements specified in the ACM Residential Manual.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
* § 150(g): Vapor barriers mandatory in Climate Zones 14 and 16 only.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
* § 150(i): Slab edge insulation: water absorption rate for the insulation on one without facings no greater than 0.3%, water vapor permeance rate no greater than 2.0 perm/inch.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
* § 118: Insulation specified or installed meets insulation installation quality standards. Indicate type and include CF-6R Form: _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
* § 116-17: Fenestration Products, Exterior Doors, and Infiltration/Exfiltration Controls.				
1. Doors and windows between conditioned and unconditioned spaces designed to limit air leakage.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Fenestration products (except field fabricated) have label with certified U-Factor, certified Solar Heat Gain Coefficient (SHGC), and infiltration certification.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Exterior doors and windows weatherstripped; all joints and penetrations caulked and sealed.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Space Conditioning, Water Heating and Plumbing System Measures</b>				
* § 110-13: HVAC equipment, water heaters, showerheads and faucets certified by the Energy Commission.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
* § 150(h): Heating and/or cooling loads calculated in accordance with ASHRAE, SMACNA or ACCA.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
* § 150(i): Setback thermostat on all applicable heating and/or cooling systems.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
* § 150(j): Water system pipe and tank insulation and cooling systems line insulation.				
1. Storage gas water heaters rated with an Energy Factor less than 0.58 must be externally wrapped with insulation having an installed thermal resistance of R-12 or greater.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Back-up tanks for solar systems, unfired storage tanks, or other indirect hot water tanks have R-12 external insulation or R-16 internal insulation and indicated on the exterior of the tank showing the R-value.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. The following piping is insulated according to Table 150-A/B or Equation 150-A Insulation Thickness:				
1. First 5 feet of hot and cold water pipes closest to water heater tank, non-recirculating systems, and entire length of recirculating sections of hot water pipes shall be insulated to Table 150-B.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Cooling system piping (suction, chilled water, or brine lines), piping insulated between heating source and indirect hot water tank shall be insulated to Table 150-B and Equation 150-A.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Steam/hydronic heating systems or hot water systems > 15 psi, meet requirements of Table 123-A.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Insulation must be protected from damage, including that due to sunlight, moisture, equipment maintenance, and wind.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Insulation for chilled water piping and refrigerant suction piping includes a vapor retardant or is enclosed entirely in conditioned space.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Solar water-heating systems/collectors are certified by the Solar Rating and Certification Corporation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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**Mandatory Measures Summary: Residential (Page 2 of 2) MF-1R**

**NOTE:** Lowrise residential buildings subject to the Standards must contain these measures regardless of the compliance approach used. More stringent compliance requirements from the Certificate of Compliance supersede the items marked with an asterisk (\*) below. When this checklist is incorporated into the permit documents, the features noted shall be considered by all parties as minimum component performance specifications for the mandatory measures whether they are shown elsewhere in the documents or on this checklist only.

DESCRIPTION	Instructions: Check or initial applicable boxes when completed or check N/A if not applicable.		ENFORCE- MENT
	N/A	DESIGNER	
<b>Space Conditioning, Water Heating and Plumbing System Measures: (continued)</b>			
§ 150(m): Ducts and Fans			
1. All ducts and plenums installed, sealed and insulated to meet the requirements of the CMC Sections 601, 602, 603, 604, 605, and Standard 6-5; supply-air and return-air ducts and plenums are insulated to a minimum installed level of R-4.2 or enclosed entirely in conditioned space. Openings shall be sealed with mastic, tape or other duct-closure system that meets the applicable requirements of UL 181, UL 181A, or UL 181B or aerosol sealant that meets the requirements of UL 723. If mastic or tape is used to seal openings greater than 1/4 inch, the combination of mastic and either mesh or tapes shall be used.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Building cavities, support platforms for air handlers, and plenums defined or constructed with materials other than sealed sheet metal, duct board or flexible duct shall not be used for conveying conditioned air. Building cavities and support platforms may contain ducts. Ducts installed in cavities and support platforms shall not be compressed to cause reductions in the cross-sectional area of the ducts.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Joints and seams of duct systems and their components shall not be sealed with cloth back rubber adhesive duct tapes unless such tape is used in combination with mastic and draw bands.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Exhaust fan systems have back draft or automatic dampers.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Gravity ventilating systems serving conditioned space have either automatic or readily accessible, manually operating dampers.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Protection of Insulation. Insulation shall be protected from damage, including that due to sunlight, moisture, equipment maintenance, and wind. Cellular foam insulation shall be protected as above or painted with a coating that is water retardant and provides shielding from solar radiation that can cause degradation of the material.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Flexible ducts cannot have porous innercores.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
§ 114: Pool and Spa Heating Systems and Equipment			
1. A thermal efficiency that complies with the Appliance Efficiency Regulations, on-off switch mounted outside of the heater, weatherproof operating instructions, no electric resistance heating and no pilot light.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. System is installed with:			
a. At least 36" of pipe between filter and heater for future solar heating.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Cover for outdoor pools or outdoor spas.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Pool system has directional inlets and a circulation pump time switch.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
§ 115: Gas fired fan-type central furnaces, pool heaters, spa heaters or household cooking appliances have no continuously burning pilot light. (Exception: Non-electrical cooking appliances with pilot < 150 Btu/hr)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
§ 118 (i): Cool Roof material meets specified criteria	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Lighting Measures</b>			
§ 150(k)1: HIGH EFFICACY LUMINAIRES OTHER THAN OUTDOOR: HID: contain only high efficacy lamps as outlined in Table 150-C, and do not contain a medium screw base socket (E24/E26). Ballasts for lamps 13 Watts or greater are electronic and have an output frequency no less than 20 kHz.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
§ 150(k)1: HIGH EFFICACY LUMINAIRES - OUTDOOR: HID: contain only high efficacy lamps as outlined in Table 150-C, luminaire has factory installed HID ballast.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
§ 150(k)2: Permanently installed luminaires in kitchens shall be high efficacy luminaires. Up to 50% of the Wattage, as determined in Section 130(c), of permanently installed luminaires in kitchens may be in luminaires that are not high efficacy luminaires, provided that these luminaires are controlled by switches separate from those controlling the high efficacy luminaires.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
§ 150(k)3: Permanently installed luminaires in bathrooms, garages, laundry rooms, utility rooms shall be high efficacy luminaires OR are controlled by an occupant sensor(s) certified to comply with Section 119(d).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
§ 150(k)4: Permanently installed luminaires located other than in kitchens, bathrooms, garages, laundry rooms, and utility rooms shall be high efficacy luminaires (except closets less than 70 ft) OR are controlled by a dimmer switch OR are controlled by an occupant sensor that complies with Section 119(d) that does not turn on automatically or have an always on option.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
§ 150(k)5: Luminaires that are recessed into insulated ceilings are approved for zero clearance insulation cover (IC) and are certified to ASTM E283 and labeled as air tight (AT) to less than 2.0 CFM at 75 Pascals.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
§ 150(k)6: Luminaires providing outdoor lighting and permanently mounted to a residential building or to other buildings on the same lot shall be high efficacy luminaires (not including lighting around swimming pools/water features or other Article 680 locations) OR are controlled by occupant sensors with integral photo control certified to comply with Section 119(d).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
§ 150(k)7: Lighting for parking lots for 8 or more vehicles shall have lighting that complies with Sections 130, 132, and 147. Lighting for parking garages for 8 or more vehicles shall have lighting that complies with Section 130, 131, and 146.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
§ 150(k)8: Permanently installed lighting in the enclosed, non-dwelling spaces of low-rise residential buildings with four or more dwelling units shall be high efficacy luminaires OR are controlled by occupant sensor(s) certified to comply with Section 119(d).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
EnergyPro 4.3 by EnergySoft	User Number: 5387	Job Number: 2007019	Page: 10 of 10

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APR-11-2008 14:32

MOZART DEVELOPMENT

650 493 9050 P.01/02

PO Box 2233  
Orangevale, CA  
95662



Phone: 916-698-4185  
Fax: 1-866-246-5814

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**ENERGY ANALYSIS and COMFORT SOLUTIONS INC.**

---

Adam Kates  
Classic Communities  
Palo Alto, CA  
Jan 30, 2008

Mr. Kates,

Thank you for the opportunity to quote the HERS testing of the Sterling Park project.

**Scope:**

The Title 24 report, for both models, indicates that a Quality Insulation Installation, (QII), inspection is required for compliance with state standards. Per our discussions, the first phase will be 15 units, and should be released about 7 units at a time. Time frame should be 4 to 6 months between releases.

The CEC procedure will require 3 inspection areas to perform a QII inspection, a brief outline follows.

Frame: inspect exterior and top plate seals.

Walls & Thermal By-Pass: Inspect filled cavities, baths and corners, installed R-values.  
Roof Prep: Inspect draft stops, platforms and vents.

Roof: Inspect filled cavities, rulers, lights, vents, weigh insulation.  
Energy Star inspection will also include windows, HVAC, and plumbing.

Collect CF6Rs from insulation contractor as required by Title 24.

Upon successful completion of HERS inspection, Certificates of Compliance and an Energy Star Certificate shall be issue and sent to Classic Communities Office.

**Pricing as follows:**

Per CEC regulations, each model shall be tested before sampling can begin. After the model inspections, group sizes can be adjusted based on sales or other factors, per Classic Communities request.  
Pricing as follows:

Each model: \$ 215.00 each

**Group sizes:**

1	\$ 215.00 per unit	\$ 215.00 total
2	\$ 130.00 per unit	\$ 260.00 total
3	\$ 105.00 per unit	\$ 315.00 total
4	\$ 92.50 per unit	\$ 370.00 total
5	\$ 84.00 per unit	\$ 420.00 total
6	\$ 79.17 per unit	\$ 475.00 total
7	\$ 75.00 per unit	\$ 525.00 total

**0000150**

APR-11-2008 14:32

MOZART DEVELOPMENT

650 493 9050 P.02/02

PO Box 2233  
Orangevale, CA  
95662



Phone: 916-698-4185  
Fax: 1-866-246-5814

---

**ENERGY ANALYSIS and COMFORT SOLUTIONS INC.**

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Inspection scheduling is very important, and must be coordinated between project manager and HERS Rater. These prices are based on the assumption that several area inspections can be performed each trip. CEC regulations require another "model test" be performed if a new Insulation contractor replaces original contractor.

General Liability Insurance shall be maintained by EACS Inc. and all HERS Raters performing inspections for Classic Communities.

Sincerely,  
Max McKinney  
EACS Inc.  
916-698-4185

Acceptance:

Printed Name:

Adam Kates

Signature:

Title:

Project Manager

Date:

4/11/2007

Fax to 1-866-246-5814

TOTAL P.02

0000151



Step 1. Update Failure

Max McKinney Logged In



**Certificate of Field Verification and Diagnostic Testing**

Project Name: Classic Communities at Sterling Park Builder Name: Nexgen Builders Plan: Classic Communities at Sterling Park Bld B

Lot Address City State Zip  
0263270 W. Bayshore Rd. Palo Alto CA 94303

The above lot(s) were recorded as failing the CF4R. The following are the tests that were failed.  
Please provide an explanation of the corrective action used:

Test	Lot / Address	Corrective Action
High Quality Insulation Installation	0267: 3270 W. Bayshore Rd.	
<div>NEXT</div>		

0000152

Cal  
C  
P  
S

Max McKinney Logged In

Edit Classic Communities at Sterling Park (ID: 34913):

Home Projects Daily Schedule Builders View/Print Invoice Rates Title 24 Consultants My Info Customer Info Reports Compliance Forms Log Out

<b>Builder:</b>	Nexgen Builders
<b>Builder Contact Name:</b>	Dan Hansen
<b>Builder Contact Phone:</b>	650-924-3777
<b>Project Name:</b>	Classic Communities at Sterling Park
<b>Building Department:</b>	Palo Alto (City) <input checked="" type="checkbox"/> Is required for certificates to be issued.
<b>Utility:</b>	PG & E <input checked="" type="checkbox"/>
	Is this Project participating in a Utilities Rebate Program? No <input checked="" type="checkbox"/>
	Application Number: Year:
<b>Project Type:</b>	Single Family
<b>Project Location or Mailing Address:</b>	3270 W. Bayshore Rd
<b>City/Zip:</b>	Palo Alto <input checked="" type="checkbox"/> 94303 [Lookup Zip]
<b>Project Superintendent &amp; Contact Phone Number:</b>	Dan Hansen 650-924-3777
	Note that this info is required BEFORE any Certificate can be issued.
<b>Status:</b>	Active <input checked="" type="checkbox"/>
<input type="button" value="Save Changes"/>	

0000153

**Max McKinney**

---

**From:** Adam Kates [AKates@MOZARTDE V.com]  
**Sent:** Thursday, May 15, 2008 10:09 AM  
**To:** 'hvacconsultant@ msn.com'  
**Subject:** Sterling Park

Max,  
We need to go in a different direction on the Q.I.I. for this project.  
Thanks for your time and counsel.

Adam Kates  
Project Manager  
Classic Communities, Inc.  
1068 East Meadow Circle  
Palo Alto, CA 94303-4230  
Phone: 650-496-4496 x248  
Mobile: 650-796-9681  
Fax: 650-493-9050  
E-mail: akates@mozartdev.com

No virus found in this outgoing message.  
Checked by AVG.  
Version: 7.5.524 / Virus Database: 269:23.16/1434 - Release Date: 5/15/2008  
7:24 AM

Page 1 of 2

**Max McKinney**

---

**From:** John Richau [john@certified -ec.com]  
**Sent:** Friday, May 16, 2008 8:42 AM  
**To:** john@certified -ec.com  
**Cc:** Debbie Thompson; George J. Nesbitt; 'HER Solar'; 'Tommy Young'; info@app -techinc.com; 'Max McKinney'; davehegarty@duct testers.com  
**Subject:** CalHERS  
**Attachments:** App-Tech on Enforcing 2005 Standards.pdf; Letter\_to\_PGE.doc

Hello all,

I've actually performed 7 duct tests, 4- energy audits (or is it analyses?) and 4 NSHP field verifications since becoming a HERS rater in February. While I've learned a lot about the testing, I've learned more than I'd like to know about the system.

Tommy wrote about a recent experience with MASCO...

*"Had a QII inspection on Tuesday that could've turned into a fist-fight. The insulating contractor (MASCO, of all people!!!) came charging at me and what are the very first words out of his mouth.... "So, Tom, how long have you been a Rater?" It went downhill from there. "It looks perfect to me. We do QII ALL THE TIME" (it was batts & it wasn't QII worthy.... it's near impossible) We're walking with the developer and he says "Sometimes a Rater will purposely push in a batt to make us look bad.. Ya they'll fluff it up just to make it look like they're actually doing something" I just waited till I got home to fail them."*

*"...So check this.... the contractor who I was gonna fail on QII found another rater who said they were golden and passed them. Problem? we already had a SIGNED contract.... so Max called CEC in to put the kaibosh on that. You can't switch raters when they fail you. It's getting ugly and I'm getting pissed and starting to want to make this personal. I bet MASCO said "I know a rater... this is easy!" There is no way they were going to pass. No way.*

Attached are comments to the CEC from Patrick Splitt of Apptech in Santa Cruz. Interesting report on Title 24 compliance. Thanks Tommy for the link.

CalHERS is not dead, folks. George, I'll send you the letter to PGE and we'll get at least 10 HERS raters to sign it. Edit away.

Cheers,

John

**John Richau**  
**HERS Rater**  
**Certified Energy Consulting**

5/19/2008

**0000155**



Page 2 of 2

Office: 559-226-1840  
Cell: 559-960-7899  
FAX: 559-222-5756  
Toll Free FAX 888-488-8804  
<http://certified-ec.com>  
CHEERS# CCN92655125

5/19/2008

0000156

3720 West Bayshore Rd.  
Palo Alto, CA

Tuesday May13, 2008  
Pre-Inspection QII

Although the development is listed as 3720 West Bayshore rd. the house I inspected was closest to Loma Verde Street between West Bayshore and Maddux.

I met Dan Hansen of NexGen Builders at the project site. We had talked the day before and I impressed upon him how hard I thought the QII credit was to achieve and is rarely achieved the first time, and batt insulation is even more difficult to pass with. I also met the Insulation sub-contractor there, George (...) from Coast Insulation. George's first question to me was "So, Tom, how long have you been a HERS Rater?" It went down hill from there. He walked me through the house pointing out how good the insulation was. He said numerous times they had done many QII and Thermal Bypass Checklist jobs. At one point he showed me the IC-1 form, I don't know why; the IC-1 form is not QII. Partially out of intimidation and in order not to jeopardize EACS' contract with the developer I remained quiet. The insulation at this rough stage was not of QII standards (no voids, gaps or compression  $> \frac{3}{4}$ "). Knee walls had yet to be insulated and recessed lighting was not covered. I noticed that foam was present at the mudsill and in the electrical runs. I specifically noted that Draft Stops were not foamed or caulked. This was a very contentious inspection. George played to the developer (Dave and Adam of Classic Communities) at one point saying "At times a HERS Rater will purposely push in a batt of insulation, then pull it out and say to the builder.... 'That's better' so as to appear they're (the HERS Rater is) actually doing something." Dave said, jokingly or not, "I saw him (me) do that." My last words were to the effect that Max McKinney would be the one to Pass or Fail this. I was here to see that they were on the right track. I said NOTHING to the effect that were or weren't, merely that the final word would come at Final QII Inspection.

I spoke with Dan Hansen again that afternoon and mentioned the architectural components of QII and he said "Who's going to pay to have that done?" I sent him two e-mails detailing QII and scopes of work so in case he had to bid on it. I explained that alternatives to QII were probably going to be preferable in this situation and would save Classic Communities a lot of money and headaches in the future.

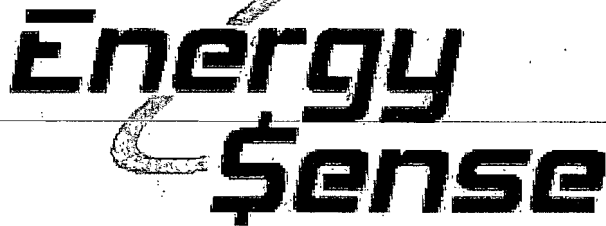
My E-mails are attached.

Tommy Young  
GRASSwerks Consulting  
415 South P Street  
Livermore, CA 94550

CalCERTS HERS Rater #CC2005051  
(ALL Residential and Solar)  
CEPE  
LEED for Homes Rater  
Green Point Rater  
Building Performance Contractor -CBPCA - Associate Member

0000157

# Attachment B



Dear Tav:

I write in response to your recent question about EnergySense, Inc.

EnergySense is a subsidiary of Masco Corporation and is in the process of being registered to do business in California. Masco is a multi-billion dollar public company and a leading provider of home improvement and building products and of installation services for insulation and other products. EnergySense was formed to provide inspection, testing, and other consulting services to builders, general contractors and subcontractors in residential and commercial construction. In California, these services include arranging for and administering energy ratings and energy efficiency field verification and diagnostic testing for purposes of EnergyStar, California's Title 24, and other energy efficiency programs offered by builders and others (such as the *Environments For Living®* program offered by another Masco subsidiary). EnergySense provides these services using raters who are appropriately trained and qualified and, for purposes of Title 24 testing and inspection, who are certified by and registered with CHEERS.

A sister Masco Company of EnergySense is Masco Services Group Corp. ("MSG"). MSG is a leading services company that, through its subsidiaries, installs insulation and a variety of other building products from over 300 locations across the United States, including in California. In California, these installation services are provided through its subsidiaries, Builder Services Group, Inc. and American National Services, Inc. and their respective subsidiaries. These various subsidiaries are sister companies of EnergySense. From time to time, EnergySense raters will inspect and/or test for purposes of Title 24 compliance installation work performed by a California branch of one of these sister companies (a "Branch"). In these instances, EnergySense would provide its services under, depending on the builder's preference, a contract with the builder; a three-party contract between the builder, the Branch and itself; or a contract with the Branch, which, in turn, would contract with the builder to provide installation services and independent inspection and/or testing services. The last situation is very much like a California Energy Commission (CEC) approved three-party contract, but allows the builder greater convenience and efficiency. EnergySense recently entered into a master subcontract agreement with Builder Services Group, Inc. and American National Services, Inc. for those instances where the builder selects the last alternative.

0000001

Regardless of which option is selected, we believe that EnergySense can inspect and/or test installation work performed by a Branch for purposes of Title 24 consistent with the requirements set forth in 20 CCR 1673(i). According to Section 1673(i), the rater (the person performing the inspection or test) must be an "independent entit[y]" from the builder and subcontractor installer of the energy efficient improvement being tested or inspected. In Section 1671, an "independent entity" is defined as "having no financial interest in, and not advocating or recommending the use of any product or service as a means of gaining increased business with," the builder or subcontract installer of the energy efficient improvement being tested or inspected. Section 1671 also defines "financial interest" as "an ownership interest, debt agreement, or employer/employee relationship. Financial interest does not include ownership of less than 5% of the outstanding equity securities of a publicly traded corporation."

***Under these definitions, EnergySense's raters are independent entities from any Branch. They have no financial interest in any Branch – that is, they have no ownership interest in or debt agreement with, and are not employees of, any Branch. Moreover, they do not advocate or recommend to any builder that it use any Branch as a means by which to gain more business with that branch.*** Indeed, EnergySense's subcontract agreements with Builder Services Group, Inc. and American National Services, Inc. expressly preclude EnergySense and its raters from doing so. Similarly, under these definitions, EnergySense, as opposed to its raters, is an independent entity from any Branch. EnergySense, like MSG, is a direct subsidiary of Masco and, as such, has no financial interest in either MSG or any Branch.

More importantly, EnergySense is confident that its raters can, and will, inspect the work of a Branch just as they would for the work of any other installer – objectively and independently. EnergySense expects its raters to conduct their tests and inspections honestly, independently, and in compliance with all applicable regulations and RESNET guidelines regardless of who the customer or installer may be. Indeed, the raters must do so in order to maintain their HERS certification according to agreements the rater signs with the HERS provider. In addition, EnergySense operates from locations separate from the Branches, and the branch managers of the EnergySense locations, who have direct oversight responsibility for the daily activities and operations of the raters, do not have any direct oversight or management responsibility for any Branch. Similarly, the managers of the Branches do not have any oversight or management responsibility for any EnergySense rater.

The independence and objectivity required and expected of EnergySense's raters in these situations is further demonstrated by the master subcontracts between EnergySense and Builder Services Group, Inc. and American National Services, Inc. These contracts provide that: EnergySense use only trained, qualified, experienced and certified raters who are registered with a HERS provider approved by the California Energy Commission. As extra oversight, CHEERS regularly monitors the test and inspection results of EnergySense's raters and, therefore, is in a position to identify and address any concern with the independence of an EnergySense rater in these situations. In this regard, earlier

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this year when he was the Executive Director of CHEERS, Tom Hamilton expressed his view that EnergySense's structure and operation as outlined above would be consistent with the conflict of interest requirements of 20 CCR 1673(i) and the related regulations.

In sum, if EnergySense raters test or inspect any work of a Branch, they can do so in compliance with the requirements of 20 CCR 1673(i), and EnergySense's operation is designed to ensure independent and objective test and inspection results from its raters in these situations. In addition, since MASCO is a large publicly traded company, MASCO has dramatically more oversight than most companies and would not risk its reputation to gain business.

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I hope that my explanation has been helpful. Please do not hesitate to contact me if you would like to discuss this matter further or would like additional information.

Sincerely,

David R. Bell  
President – EnergySense  
(386) 763-4955

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## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512  
www.energy.ca.gov



May 15, 2007

Mr. David R. Bell  
President – EnergySense  
14655 Northwest Freeway, Suite 102  
Houston, TX 77040

**RE: Possible Conflict of Interest under the California Home Energy Rating System (HERS) Program**

Dear Mr. Bell:

Thank you for your letter (which was not dated) responding to the California Energy Commission staff's (henceforth referred to as staff) concerns that a potential conflict of interest under the California Home Energy Rating System Program (HERS) exists between EnergySense and its parent company Masco Corporation and one or more of Masco subsidiaries. Under the HERS regulations, California Code of Regulations, title 20, sections 1670 through 1675, there is no conflict of interest if (1) providers<sup>1</sup> are legally independent entities from the raters<sup>2</sup> who provide field verification and diagnostic testing, and (2) providers and raters are legally independent entities from the builders, and subcontractors who install energy efficiency improvements that are field verified and or diagnostically tested under the HERS program.

From the facts provided in your letter, it appears that EnergySense would be considered a rater under the HERS regulations (Cal. Code Regs., tit. 20, § 1671) because it provides the raters to conduct site inspection for data collection, field verification, and diagnostic testing required for demonstrating compliance with the Title 24 energy performance standards. Also as stated in your letter, EnergySense uses raters that are certified by and registered with CHEERS, a HERS provider under California Code Regulations, title 20, section 1671.

It is staff's understanding that EnergySense is a subsidiary under corporate control of parent company, Masco Corporation and that Masco Corporation, has subsidiaries under its corporate control (e.g., Masco Services Group Corporation, Builder Services Group, Inc. and American National Services) that participate in the HERS Program. It is staff's

<sup>1</sup> Providers means an organization that administers a home energy rating system in compliance with ... [the HERS Regulations] Cal. Code Regs., tit. 20, §1671.

<sup>2</sup> Rater means a person performing the site inspection and data collection required to produce a home energy rating or the field verification and diagnostic testing required for demonstrating compliance with the Title 24 energy performance standards. . . Cal. Code Regs., tit. 20, § 1671.

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understanding that the nature of the Masco Corporation structure operating under the HERS program is as follows:

1. The parent Masco Corporation is a supplier of energy efficiency products that are installed under the HERS program;
2. The subsidiary Masco Services Group Corporation and its subsidiaries, Builder Services Group, Inc. and American National Services, are installers of energy efficient products that include products produced by parent Masco Corporation, and
3. The subsidiary, EnergySense, provides raters to conduct site inspection, data collection, HERS field verification, and diagnostic testing required for demonstrating compliance with the Title 24 energy performance standards of products produced by the parent Masco Corporation, and installed by subsidiaries Builder Services Group, Inc. and American National Services.

A conflict of interest exists under California Code of Regulations, title 20, section 1673 (i)(2) if a rater is not an independent entity from the builder and from the subcontractor who install energy efficiency improvements under the HERS program.<sup>3</sup> An independent entity as defined in CCR title 20 section 1671 means having no financial interest in and not advocating or recommending the use of any product or service as a means of gaining increased business.<sup>4</sup> Financial interest means an ownership interest, debt agreement, or employer/employee relationship, but does not include ownership of less than 5% of the outstanding equity securities of a publicly traded corporation. (Cal. Code Regs., tit. 20, §1671)

Without supplementary documentation provided to the contrary, it appears that a violation of the conflict of interest provision under the HERS regulations could exist between EnergySense and various entities under the Masco Corporation structure because of the following presumptions:

1. Parent company Masco Corporation, a supplier of energy efficiency products installed under the HERS program, has a financial interest as defined under California Code of Regulations, title 20, section 1671 in its subsidiaries EnergySense (a HERS rater), Masco Services Group Corporation (a HERS installer) and its subsidiaries, Builder Services Group, Inc (a HERS installer) and American National Services (a HERS installer).

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<sup>3</sup> Cal. Code Regs., tit. 20, §1673 (i) Conflict of Interest.

(2) Providers and raters shall be independent entities from the builder and from the subcontractor installer of energy efficiency improvements field verified or diagnostically tested. Emphasis added.

<sup>4</sup> Cal. Code Regs., tit. 20, §1671: Independent Entity means having no financial interest in, and not advocating or recommending the use of any product or service as a means of gaining increased business with, firms or persons specified in Section 1673(i). Note: The definitions of "independent entity" and "financial interest," together with Section 1673(i), prohibit conflicts of interest between providers and raters, or between providers/raters and builders/subcontractors

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2. As a subsidiary of parent Masco Corporation, EnergySense may not be operating as an independent entity as defined in California Code of Regulations, title 20, section 1671 because it is under corporate control of its parent, Masco Corporation, and EnergySense may advocate and recommend the use of Masco's energy efficiency products installed under the HERS program or advocate and recommend the use of Masco Corporation subsidiaries that install energy efficiency products under the HERS program.

Please provide staff with the corporate structure that exists legally between parent Masco Corporation and subsidiary EnergySense with reference to the potential conflict of interest under the HERS regulations. Such information should include but is not limited to the following:

1. Percent of corporate voting shares that the parent, Masco Corporation, owns directly or indirectly through one or more of its subsidiaries, of subsidiary EnergySense.
2. Names of any persons that are employed as a board members and/or officers in more than one of the companies under the Masco Corporation structure including the parent and any subsidiaries that provide products or services under the HERS program.
3. Does parent Masco Corporation have corporate authority over its subsidiary EnergySense for any of the following?
  - (a) Selecting the directors.
  - (b) Appointing a majority of the members of the governing board.
  - (c) Using or directing the use of the individual assets of EnergySense to achieve the objective of the parent.
  - (d) To examine the financial reports and business plans, and to otherwise hold EnergySense and its management accountable for performance expectations of the parent.
  - (e) Have voting control provisions in EnergySense's articles of incorporation or provisions that prohibit amendments of the articles without the approval of the parent.
4. Did parent Masco Corporation prepare any of the bylaws defining the designation and authority of officers, their terms of office, and their removal (for cause or no cause) for EnergySense?
5. Do EnergySense's bylaws include procedures whereby parent Masco Corporation elects and removes directors or prohibit amendments of its bylaws without the parent Masco Corporation's approval?
7. Does parent Masco Corporation, or any of its subsidiaries have a debt agreement with EnergySense?
8. Does parent Masco Corporation, or any of its subsidiaries have any employees who are also employees of EnergySense?

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9. Does parent Masco Corporation or any of its subsidiaries (other than EnergySense) mention EnergySense in any written, verbal, radio or television advertising or information? If so, please submit a copy of that information.
10. Does EnergySense mention parent Masco Corporation or any of its subsidiaries in any written, verbal, radio or television advertising or information? If so, please submit a copy of that information.
11. Does parent Masco Corporation or any of its subsidiaries (other than EnergySense) provide customer referrals to EnergySense? If so, please submit examples of the full range of referral messages that are provided.
12. Does EnergySense provide customer referrals to parent Masco Corporation or any of its subsidiaries? If so, please submit examples of the full range of referral messages that are provided.
13. Does parent Masco Corporation or any of its subsidiaries (other than EnergySense) mention in bid responses or price sheets any services provided by EnergySense? If so, please submit copies of these documents.
14. Does EnergySense mention in bid responses or price sheets any services provided by parent Masco Corporation or any of its subsidiaries? If so, please submit copies of these documents.

If you have any questions concerning this letter and the staff's request for supplemental information, please contact Bill Pennington, Building and Appliance Office, at (916) 654-4939.

Sincerely,



William Staack  
Senior Staff Counsel

WS/jm

cc: Dick Ratliff, Staff Counsel IV  
William Pennington, ERDA  
Tav Commings, ERDA

0000007

# Attachment C

*Carol A. Davis*  
ATTORNEY AT LAW

RECEIVED BY  
2008 APR 25 PM 3:06  
CHIEF COUNSEL OFFICE

April 23, 2008

William Staack, Senior Staff Counsel  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814-5512

Dear Mr. Staack:

I am legal counsel to California Home Energy Efficiency Rating Services (CHEERS), and am writing to you at the request of its board of directors. CHEERS has received a formal complaint regarding a possible conflict of interest under the California Home Energy Rating System (HERS) Program. The complaint is basically the same one addressed in detail in the enclosed letter dated May 15, 2007 from you to David R. Bell, President of EnergySense.

CHEERS requests specific guidance from the California Energy Commission regarding this important matter. If a determination has been made that a conflict of interest does or does not exist, please so advise us. If a determination has not yet been made, please advise us when it will be made.

Thank you in advance for your written response.

Best personal regards,



Carol A. Davis  
CHEERS Legal Counsel

cc: William Pennington, ERDA  
Tav Commings, ERDA

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## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512  
www.energy.ca.gov



April 28, 2008

Carol A. Davis  
CHEERS Legal Counsel  
3009 Palos Verde Drive West  
Palos Verdes Estates, CA 90274

Re: **California Home Energy Rating System (HERS) Program Conflict of Interest**

Dear Ms. Davis:

The California Energy Commission (CEC) has received your letter, dated April 23, 2008, regarding a possible conflict of interest under the HERS Program. Mr. William Staack of my office has forwarded your letter to me for a response.

Sections 1670 through 1675 of the California Code of Regulations (CCR) contain the rules and regulations for the HERS Program. CCR Section 1675(b) states that any person or entity may file a complaint concerning any violation of the HERS Program regulations as provided for in Section 1230 et seq. of the CCR. Section 1231(b) of the CCR sets forth the required information that must accompany a complaint, or request for investigation, including a declaration under penalty of perjury attesting to the truth and accuracy of any factual allegations.

On March 18 of this year, via e-mail I advised Mr. Bill Lilly of California Living & Energy of the requirements for filing such a complaint or request for investigation. Mr. Lilly responded by e-mail the same day, stating that he would be filing the documentation no later than the next week. In an e-mail later that day, Mr. Lilly asked why he should have to file a complaint, when the regulations allegedly being violated were those of the CEC. In response, via e-mail on March 19, I told him the following:

"Filing a complaint or request for investigation is the formal process by which violations of the CEC's regulations are dealt with. You are the one who brought the allegations of MASCO's violations to the CEC, and you have certain knowledge about the facts that the CEC does not (for example, you were the one who saw the MASCO paycheck given to the Energy Sense employee, not anyone at the CEC). As such, it appears that you are the person best situated to initiate a formal complaint or request for investigation."

In that same e-mail, I explained to Mr. Lilly part of the rationale behind the formal complaint process, as follows:

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"By filing a complaint or request for investigation, all parties and the CEC will be required to comply with specific time frames that are set forth in the regulations, and thus the matter cannot be ignored or 'put on the back burner' by the parties, including MASCO, or the CEC. This will give you a measure of predictability about the process and the time it will take to come to a resolution."

Via e-mail that same day, Mr. Lilly thanked me for the above information, noting that, "I understand a lot more about the process and will proceed accordingly." This response, coupled with Mr. Lilly's initial e-mail of March 18, led me to believe that he would be filing a complaint or request for investigation pursuant to CCR Section 1230 et seq.

On April 8 of this year, I was one of several recipients of an e-mail from Dave Hegarty of DuctTesters regarding this matter. In that e-mail, Mr. Hegarty noted that "[a]n attempt to work with the Commission and Staff on these issues is in progress." This left me with the impression that filing a complaint or request for investigation per CCR Section 1230 et seq. was still contemplated.

As of this date, the CEC has not received a complaint or request for investigation under CCR Section 1230 et seq. from Mr. Lilly, Mr. Hegarty, or any other person or entity. As such, there has been no determination of any alleged conflict of interest.

If the California Home Energy Efficiency Rating Services (CHEERS) or any other person or entity wishes to file a formal complaint or request for investigation regarding this matter, they should do so pursuant to the provisions of CCR Section 1230 et seq. This is the process specifically identified by the HERS Program regulations. Utilizing this procedure will help to ensure that all parties are provided due process, and that those with first-hand knowledge of any facts that might establish a violation of the HERS Program regulations articulate those allegations at the outset of any proceedings.

Please note that I will be out of the office from May 1 to May 12. If you need further information before I return on the 12<sup>th</sup>, please contact Mr. Staack at this same address. Thank you.

Sincerely,

DENNIS L. BECK, JR.  
Senior Staff Counsel  
Phone: (916) 654-3974  
[dbeck@energy.state.ca.us](mailto:dbeck@energy.state.ca.us)

cc: Bill Pennington, MS-25  
Tav Commins, MS-25  
Jonathan Blees, MS-14  
William Staack, MS-14

**0000003**